हे पुस्तक
मोडत आहे
साधारण बाइन्डिंग

Digitized with financial assistance from

HT Parekh FOUNDATION

An Initiative by

HDFC

WITH YOU, RIGHT THROUGH

on 27 November, 2018

THE LIVES

OF

TWELVE EMINENT JUDGES

OF THE LAST AND OF THE PRESENT CENTURY.

BY

WILLIAM C. TOWNSEND, ESQ. M.A.

RECORDER OF MACCLESFIELD.

IN TWO VOLUMES.

VOL. II.

XX-e-11

LONDON:

PRINTED FOR

LONGMAN, BROWN, GREEN, AND LONGMANS,

PATERNOSTER-ROW.

1846.

00023624

CONTENTS

OF

THE SECOND VOLUME.

CHAPTER I.

LIFE OF LORD ERSKINE CONTINUED.

His Success in obtaining Verdicts and heavy Damages in Cases of Seduction and Crim. Con. Trial of Markham and Fawcett; of Stockdale; of Cuthell. Letter to Dr. Parr. Brilliant Defence of Hardy and Horne Tooke. Erskine's Dexterity, Readiness, Tact, and Eloquence. Impassioned Pleading for Thelwall. His triumphal Procession to Serjeants' Inn. This the proudest and happiest Period of his Life. Always retained for Defendants with two Exceptions. Prosecution of Age of Reason and Williams. Erskine's Appearance as a Witness. Defence of Earl Thanet and Mr. Ferguson. That Gentleman's just Eulogium on his noble Advocate. Pages 1—44

CHAPTER II.

LIFE OF LORD ERSKINE CONTINUED.

Trial of Hadfield for High Treason. Examples of Erskine's Ingenuity and Eloquence. Serjeant Talfourd's Criticism on Erskine. Compared with Curran. Instances of their Independence; Sensibility; Pathos; Imagination; Humour; Readiness. Unlucky Promotion of each. Erskine's Pamphlet on the War. Offered the Post of Attorney-General. Visit to Paris at Bonaparte's Levee. Erskine's Opinions on Points of Law. Elected Lord Chancellor and Baron Erskine. Specimens of his Judgments. Lofty and graceful Demeanour at Lord Melville's Trial. His Courtesy and Good-nature. His yielding up the Seals, and Mortification. Speech and Letter. Considered as a Debater in the House of Lords. History of his Bill against Cruelty to Animals. Anecdotes of him in Retirement. His Armata. Extracts from the Work. His pathetic Praise of Fox 45—95

CHAPTER III.

LIFE OF LORD ERSKINE CONCLUDED.

Lord Erskine's Residence at Hampstead. Habits in Society. His Poem "The Farmer's Vision." Verses on Himself. Disinclination to constant attendance in the House of Lords. Able but unsuccessful Advocacy of Col. Knolly's Claim to the Banbury Peerage. Protest. Subsequent Participation in the Debates. Speeches against the Six Acts. On the Bill of Pains and Penalties against Queen Caroline. His Illness. Invited to a public Dinner at Edinburgh. Knight of the Thistle. His Pamphlet. Correspondence. Reduced in Wealth. Lively in Society to the Last. Interview with Mr. Rush. The 'old man garrulous.' Death. Will. Family. Account of his Brothers, the Earl of Buchan and Harry Erskine. Praise of the Latter. The Memory of Erskine justly adored by the Bar - - - - Pages 96—144

CHAPTER IV.

LIFE OF LORD REDESDALE.

Ancestry of the Mitfords traced to a Period beyond the Conquest. William Mitford the Historian. John Mitford Clerk in the Six Clerks' Office. His admirable Treatise on the Court of Chancery. Went the Western Circuit. Annual Circuit Dinner at Greenwich. Returned to Parliament by the Duke of Northumberland for Beeralston. His Measure for relieving Protesting Catholic Dissenters. Chancellor of Durham. Judge for Three Counties in South Wales. Solicitor-General. History of his Conduct in the State Trials. Elected Speaker. Eulogised by Grant. Created Lord Chancellor of Ireland and Baron Redesdale. Libelled by Barrington and Judge Johnson. History of the Trial. Merits of Lord Redesdale as Chancellor. His Marriage. Dismissal from Office by the Whigs. Rival to Lord Eldon as a great Equity Lawyer. His Letters and Lucubrations on the State of Ireland. An active Legislator. His Insolvent Debtors' Act. Report on the Dignity of a Peer of the Realm. Leading Authority on the Law of Peerages. Death. Entitled to high Praise - 145—190

CHAPTER IV.

LIFE OF SIR WILLIAM GRANT.

His Lineage discussed by a French Author. His Birth and Boyhood. Educated at Aberdeen and Leyden. Sent to Canada. Attorney-General there. Return to the English Bar, and unsuccessful. His

Interview with Pitt. Introduced by him to Parliament. A great Orator from the First. Examples. Consequent and rapid Rise at the Bar. Solicitor-General. Appointed Master of the Rolls with the General Assent of the Profession. Commander of the Lincoln's Inn Corps. His Control over the House of Commons and Dislike to Reforms. A perfect Model of Judicial Eloquence and Ability. Tributes to his Memory by Lord Brougham and Charles Butler. Examples of his Power contrasted with Lord Eldon and Sir Joseph Jekyll. His superior Despatch. Premature Retirement. Narrative of his Resignation. Romilly's Estimate of Grant. His Virtues. Retires to Dawlish. Anecdotes of his Old Age. Literary. Letter. Portrait. Has left no Successor able as himself. Pages 191—233

CHAPTER V.

LIFE OF LORD TENTERDEN.

"Labore" his Motto and Practice. Charles Abbott born at Canterbury. Of humble Parentage. Educated at the Grammar School. His Likeness as a Boy sketched by Sir Egerton Brydges. Gains Latin Prize Poem and English Essay on Satire at Oxford. Extracts from this Essay. Clerk to a London Solicitor. Assiduous Special Pleader. Laid a sure Introduction to Business at the Bar. Went the Oxford Circuit. Marriage. Treatise on the Law of Merchant Shipping. His Return of Income Tax to the Commissioners. Not efficient as an Advocate. Excellent as Chamber Counsel. Promoted to the Bench. Chief Justice. Portraits of his Judicial Character. Specimens of his Judgments. Harsh Demeanour to Counsel. Anecdotes of the Chief Justice in Court. His Severity. Canning's Letter offering a Peerage. Created Lord Tenterden. A valuable Peer, both as a Speaker and Legislator. His Letters. Latin Verse. Illness. Last Words. Monument at the Foundling, with Inscription written by himself - - - - 234—278

CHAPTER VI.

LIFE OF LORD STOWELL.

Doctors' Commons rarely visited. Its Treasures. Birth of William Scott. Education under the Rev. H. Moises. Account of his Tutors. Elected Fellow. Camden Reader of Ancient History. His Lectures. Happy Life at the University. Letters to his Brothers. Rapid Rise as a Civilian. Divides his Time between Law and Literature, which should never be divorced. Dr. Scott's Letters to Warton, Malone, and Parr. Member of the Literary Club. Intimacy with Dr. Johnson. Judge-Advocate. Knighted. Champion of the Established Church and Clergy. Judge of the Consistory Court. Beautiful Diction of his Judgments and Sentiments. Trial of Marquis of Sligo. Sir W.

Scott's Marriage to the Marchioness. Action against the Consistory Judge - - - - Pages 279—332

CHAPTER VII.

LIFE OF LORD STOWELL CONCLUDED.

Judge of the Admiralty Court. Review of his Judgments. Condemnation of American Vessels. Quotations from some of his felicitous Sayings and Sentences. Judgment on Iron Coffins. On the Slave Grace. Created Lord Stowell. Anecdotes of his Age; and private Life. Of his Literary Tastes and Friends. His Amusements. Addiction to Thrift. His Repartees and festive Conversation. The great Judge of the Law of Nations. Deserves a Monument in Westminster Abbey - - - - 333—365

CHAPTER VIII.

LIFE OF LORD ELDON.

Worthy of a double Biography. His Parentage and Schooling. Sent to Oxford at Fifteen. Gains a Fellowship; the Prize Essay. Extracts. Runs off with Miss Surtees. Anecdotes of that Lady. His Gretna Green Marriage most happy. Early Privations and Economy. Hard Work. Studies Conveyancing with Duane. Indefatigable. His early want of Success at the Bar exaggerated. History of his first Cases. Wins the Favour and Patronage of Lord Thurlow. His Northern Circuit. Returned to Parliament through the Chancellor's Influence. Speaks for the first Time the same Night as Erskine. Attacked by Francis. Elected Solicitor-General. Knighted by Compulsion. Intimacy with Pitt. Attorney-General. His personal Carriage and Demeanour in the State Prosecutions. Anecdotes. His Gentleness and Self-command. A severe Prosecutor of Libels. Wishes to retire with Lord Thurlow. Overruled. Created Baron Eldon and Chief Justice of the Common Pleas. A consummate Common Law Judge. His Amenity of Manners. 366—407

CHAPTER IX.

LIFE OF LORD ELDON CONTINUED.

Elected Lord Chancellor. His long Official Dynasty. Accomplished Equity Judge. The Censures cast upon him considered. His Hesitation in pronouncing Judgment and Delays, an Old Grievance in Chancery. The Cases analysed. His own Apology. Faulty Style of his Judgments. Exercise of the Chancellor's extraordinary Powers in controlling the Rights of Parents over their Children. Cases of Shelley and Long Wellesley. Lord Eldon's Refusal to

protect Literary Property, less completely justified Publication of Wat Tyler. His lesser Patronage not always judicious. Sparing of Favours to the Bar. Delightful Judge to practise before. Kept his Court in excellent Discipline. His Bon-mots. Popular in the House of Lords and with the King. Accused by Lord Grey for his Conduct on the King's Illness. His Sensibility and animated Defence. Comments of Lord Brougham on his Conduct as Chancellor - - - - Pages 408—454

CHAPTER X.

LIFE OF LORD ELDON CONTINUED.

His Merits as a Politician. A decided Tory. Prevented much Evil, and some Good. Shrunk from the Task of Legislation. Introduced a few useful Measures. Too indiscriminate an Anti-Reformer. Denounces Romilly's Amendments of the Penal Code. Most conscientious and painstaking in the Discharge of his multifarious Duties. A pleasing and dexterous Debater among his Brother Peers. Instances. His Retorts on Lord Ellenborough and Lord Erskine. Speech on the Queen's Trial. An attached friend to the Established Church. Determined Antagonist of the Repeal of the Test and Corporation Act, and Roman Catholic Emancipation. Prophesies the Evils to flow from it in no false Spirit of Prophecy. Protests against the Reform Bill - - - 455—488

CHAPTER XI.

LIFE OF LORD ELDON CONCLUDED.

Appeals by the Nestor of the House to his Brother Peers. Lord Eldon views the Municipal Corporation Act with feverish Alarm. Retires from the House through loss of Voice and Age. Tone of Despondency in his Letters. Domestic Bereavement. Old Age and easy Death. His placid Benevolence. Funeral. Great Wealth. Will. Anecdotes of his Goodness in Domestic Life. Sociability. A delightful Companion. Sporting Adventures. Of his simple Tastes and unruffled Temper. Visit to Oxford on the Installation of the Duke of Wellington as Chancellor. His own Disappointment in obtaining that Office. Foundation of the Eldon Law Scholarship. John Scott himself the best Example to the Eldon Scholar.

489—520

THE LIVES

OF

EMINENT JUDGES.

CHAPTER I.

THE LIFE OF LORD ERSKINE CONTINUED.

THE skill and eloquence thus occasionally perverted on the criminal side of the Court never attained greater excellence, or were attended with more complete success, than in wringing damages from the adulterer in an action at Nisi Prius, to an amount rarely heard of before, and which are now again becoming matter of tradition. The law has only recourse to pecuniary compensation in such cases, from the want of power to make the sufferer any other, but this compensation, with Erskine for the plaintiff and Lord Kenyon for the judge, was run up to a dangerous extreme. There might be moral mischief in tempting a husband to expose his wrongs, or a profligate to barter shame for pelf, tainting the public ear with details of domestic infamy, and leading to frequent collusion; but in the discussion of such topics, however much the community might suffer, a forensic orator found large sources of fame and power, and the most ample materials for his art. Erskine boldly justified the prodigality of juries, who showered on his frequently worthless clients sums of 5000*l.*, 8000*l.*, and even 10,000*l.*, urging that the rights they vindicated were more valuable than property, and that no adequate return in money could be made.

"What Court shall say in an action for slandering an

honest and virtuous character, that a jury has over-rated the wrong, which honour and sensibility endure at the very shadow of reproach? If the wife is seduced by the adulterer from her husband, or a daughter from the prosection of her father, can the Court say, this or that sum of money is too much for villany to pay, or for misery to receive?"

This doctrine had been enforced by Erskine with success, under very peculiar circumstances, early in his career.

In the case of Morton v. Fell, an old man had induced a gentlewoman to live with him as housekeeper, under promise of marriage. She gained 2000*l.* damages for this breach of promise, though Wallace pointed out the mummy of a husband to the jury, described the plaintiff as an ugly old woman, and tried to laugh the case out of Court. Erskine had the laugh on his side when the rule for a new trial on account of excessive damages came to be argued—

"I am sure every body who was in court must agree with me, that all the disorders catalogued in the Dispensatory seemed to be running a race for his life, though the asthma appeared to have completely distanced his competitors, as the fellow was blowing like a smith's bellows the whole time of the trial. His teeth being all gone I shall say nothing of his gums, and as to his shape, to be sure a brass fiddle is perfect gentility compared with it. . . The woman is shut out from all prospect of a future settlement, having neither beauty nor youth to recommend her. How can your lordships impeach or unravel the calculation? They are not like the items in a tradesman's account, or the entries in a banker's book; it is 'For loss of character so much. For loss of health so much. For loss of the kind protection of relations and friends so much. And for the loss of a settlement for life so much.' How is the Court to audit the account?" The Court of King's Bench declined to interfere.

Nothing can exceed the delicacy and tenderness with which the pathetic orator described scenes of domestic endearment and felicity, or the lofty tone of indignation with which he lashed the invaders of them.

In the case of Dunning *v.* Sir Thomas Turton, describing the state of a husband fondly attached to his wife, but who

suspected her fidelity, Erskine painted the different emotions of his soul in the most lively colours — the agonies of suspense — the feverish irritatation of unrelieved doubt — the struggles of the wounded spirit as to a fact, which, while the heart wanted to disbelieve, his mind told him was but too true. He pronounced the passage from Othello with great effect, — an effect which nothing short of his musical recitation could produce : —

" ' But oh, what damned minutes tells he o'er,
Who doubts, believes, suspects, but strongly loves.'

" But," continued the eloquent advocate, " when suspicion is realized into certainty, and his dishonour is placed beyond the reach of doubt, despair assumes her dominion over the afflicted man, and well might he exclaim from the same page —

" ' Had it pleas'd Heaven
To try me with affliction ; had He rain'd
All kinds of sores and shames on my bare head ;
Steep'd me in proverty to the very lips ;
Given to captivity me and my hopes ;
I should have found in some place in my soul
A drop of patience. But now ——— ' "

He stopped, and the effect was visible to every eye in court. The language of Shakspeare, ever true to nature, never fails to make its way to the heart. No one knew how to give it that direction with more force.*

His citations from the inspired page were equally happy. In Markham *v.* Fawcett he crowned his pathetic appeal with a thrilling and most apposite quotation — †

" You cannot minister to a mind diseased. You cannot redress a man who is wronged beyond the possibility of redress ; the law has no means of restoring to him what he has lost. God Himself, as He has constituted human nature, has no means of alleviating such an injury as the one I have brought before you. Will ten thousand pounds place him in the same condition of comfort and happiness that he enjoyed before the adultery, and which the adulterer has deprived him of?

* Espinasse. † Erskine's Speeches.

You know that it will not. Ask your own hearts the question, and you will receive the same answer. I should be glad to know then upon what principle, as it regards the private justice which the plaintiff has a right to, or upon what principle, as the example of that justice affects the public and the remotest generations of mankind, you can reduce this demand even in a single farthing.

"I have established a claim for damages, that has no parallel in the annals of fashionable adultery. It is rather like the entrance of sin and death into this lower world. The pair were living like our first parents in Paradise, till this demon saw and envied their happy condition. Like them they were in a moment cast down from the pinnacle of human happiness into the very lowest abyss of sorrow and despair. In one point indeed the resemblance does not hold, which, while it aggravates the crime, redoubles the sense of suffering. It was not from an enemy, but a friend, that this evil proceeded. I have just had put into my hands a quotation from the Psalms upon this subject, full of that unaffected simplicity which so strikingly characterises the sublime and sacred poet. 'It is not an enemy that hath done me this dishonour, for then I could have borne it. Neither was it mine adversary that did magnify himself against me; for then peradventure I would have hid myself from him; but it was even thou, my companion, my guide, mine own familiar friend.' This is not the language of counsel, but the inspired language of truth."

Engaged as counsel in almost every action of note for criminal conversation, he only appears to have been three times retained for the defendant. In one of these causes he reduced the plaintiff's damages to a farthing; in the second he won a verdict; and in the third—the great case of Howard and Bingham—the damages were only 500*l.*, a small sum considering the rank of the parties and the circumstances. In this extraordinary case, where he represents his client, the defendant, as the husband of the plaintiff's wife by plighted faith and virtuous attachment, whatever forms or ceremonies might have been employed to give an appearance to the contrary, and then brings the plaintiff forward as the violator,

and makes *him* the defendant; the whole conception is in a strain of boldness, and executed with a degree of vigour worthy of Demosthenes.

This pleading, and the defence of Stockdale, may be deemed his best efforts. "Never," says the Edinburgh Reviewer *, could he have been elevated to the pitch of that most extraordinary, most poetical, and sublime passage, so entirely in the tone of antiquity (we mean the introduction of the savage in his speech), by the cold and comparatively unmeaning *Hear — Hear* of an assembly, which would not be convinced (so far as conviction is manifested by conduct), 'though one rose from the dead.' He saw and felt that he was gaining over the jury. Secure of this point, but still unsatisfied, and not permitting the advantage gained to be even a resting-place in his lofty career, he proceeded to deliver that victorious and triumphant passage which contributed, doubtless, largely to the deliverance of his client, and will remain an everlasting monument of his glory, whilst the name of England and its language shall endure.

"It is worthy of note for the use of the student in rhetoric, that Erskine wrote down word for word the passage about the savage and his bundle of sticks. His mind having acquired a certain excitement and elevation, and received an impetus from the tone and quality of the matured and premeditated composition, retained that impetus after the impelling cause had died away."

Though successful in extricating Stockdale from the persecution of a vindictive House of Commons, not even Erskine's eloquence could avail to save the majority of his clients, when visited with *ex-officio* informations for the unpardonable sin of libel.

The following is a remarkable instance of the relentless rigour with which the power of the Attorney-General was then exerted, almost beyond the law. It also places in a strong light, the ingenuity of the great advocate, who declared that he must have, though his clerk concealed it from him, a general retainer for political libellers, having defended

* Lord Brougham, in No. 63.

every one who had been brought to trial for a period of twenty years.

The proprietor of the Courier was prosecuted for inserting in his paper this well-meant paragraph:—

"The Emperor of Russia is rendering himself obnoxious to his subjects by various acts of tyranny, and ridiculous in the eyes of Europe by his inconsistency. He has now passed an edict, prohibiting the exportation of timber, deals, &c. In consequence of this ill-timed law, upwards of 100 sail of vessels are likely to return to that kingdom without freights."

Erskine justified these remarks on the vagaries of the Russian madman:

"Instead of endeavouring, like one of his great predecessors, who worked in the dockyards of England, to carry the useful arts of the world into his own country, no man could enter it for purposes of trade or science, without a passport, and even personal recommendation—a regulation founded upon the weak imagination, that evil principles could be imported, like corporeal pestilence, and shut out by a police, on the principle of quarantine—an idea which reminds me of what Milton says, in his Areopagitica, of a wise country gentleman, who raised the wall of his park to keep out the crows.

"As to the danger to the state from these sort of writings more especially, as when in this case there has been no kind of complaint, I should think that Russia from its immense distance, and from the circumstance that our newspapers do not circulate there, as in France and Germany, and that our language is but little known among the inhabitants, was of all instances of apprehension on that score the most singular to select; and, if it succeeds, I expect to see very soon an information filed for a libel upon the planet Saturn, setting forth that the printer of some London newspaper, maliciously intending and contriving to disturb the laws of gravitation, and to create great disorder and mutiny amongst the planets, had printed and published that Saturn had no dependence on the Sun, and was not governed in its orbit by its influence,

with another count for publishing that he had only four satellites, whereas in truth and in fact he had five."

This clever raillery could not save the unfortunate proprietor from a confinement of six months in the King's Bench Prison and a fine of 100*l.*

How much Erskine felt the excessive harshness of such punishments, he has himself vividly expressed in the defence of Cuthell the bookseller for libel:

"The Court of King's Bench, since I have been at the bar (very long I admit before the noble lord presided in it but under the administration of a truly great judge) pronounced the infamous judgment of the pillory on a most respectable proprietor of a newspaper for a libel on the Russian ambassador, copied, too, out of another paper, which I myself showed to the court, by the affidavit of his physician, appeared in the first as well as in the second paper, whilst the defendant was on his sick bed in the country, delirious in a fever. I believe that affidavit is still on the files of the court; I have thought of it often, I have dreamed of it, and started from my sleep—sunk back to sleep, and started from it again. The painful recollection of it I shall die with."

We must open the volume of State Trials once more for the year 1794, to view the legal patron of great criminals, clothed in all the attributes of his power, to admire him as he wielded every available weapon of defence in the protection of life and liberty, and to congratulate him when borne from court on the shoulders of the people, the triumphant champion of the oppressed.

In the Bibliotheca Parriana there appeared a presentation copy of Erskine's speeches at the bar, bound in large paper, russia extra, accompanied by the following letter:

"2. Upper Grosvenor Street, April 14th, 1812.

"Dear Dr. Parr,

"If I had published these volumes myself, you should have had the very first copy of them. If they contain nothing which may advance the cause of the world, they ought to be presented to nobody; but if they do, in whose library can they be so fitly

placed as in yours, though on my account I fear the severe judgment of one who must have ever present to his mind

> 'Those ancients whose resistless eloquence
> Wielded at will that fierce democratie,
> Shook th' arsenal, and fulmin'd over Greece
> To Macedon and Artaxerxes' throne.'

"My hope, however, is, that you may be deceived into an approbation of them, when you recollect that it is the cause of our own renowned and beloved country, which is pleaded in them, and by an old and sincere friend; and that they were not precomposed, nor even premeditated, much less like some of old—written after the occasions; but were all of them, as far as expression goes, impromptu, in the most literal sense of the world, and only preserved by the art of short-hand writing; not, I believe, known in Greece or Rome, nor indeed at all necessary to perpetuate the superior but laboured compositions of antiquity. ERSKINE."*

No lover of classical literature should hesitate to place by the side of the orators of the Crown and the Philippics against Anthony, the logical reasoner and legal rhetorician, who struck down the dangerous doctrine of constructive treasons. The simple words of the statute of Edward, that treason shall be said, when a man doth compass or imagine the death of our lord the king, had been interpreted to extend to any conspiracy to levy war in order to put any personal restraint upon the king, because the graves of princes are near their prisons; or in order to depose the king, because that is a civil death; or in order to oblige him to alter his measures of government, because these purposes cannot be effected by open force without manifest danger to his person. The last of these artful interpretations was effectively combatted by this steadfast antagonist, who has been eulogized for his achievements by Lord Brougham in glowing language, and with all the fervour of a brother Whig.

"His dauntless energy, his indomitable courage, kindling his eloquence, inspiring his conduct, giving direction and lending firmness to his matchless skill, resisted the combina-

* Our modern Tully is mistaken in this notion; there is an instance of a speech of Cato the younger being taken in short-hand, mentioned in his life by Plutarch. Cicero, we are told, stationed these short-hand writers in the Senate House.

tion of statesmen, and princes, and lawyers, the league of cruelty and craft, formed to destroy our liberties, and triumphantly scattered to the winds the half-accomplished scheme of an unsparing proscription. Before such a precious service as this, well may the lustre of statesmen and of orators grow pale; and yet this was the achievement of one, only not the first orator of his age, and not among its foremost statesmen, because he was, beyond all comparison, the most accomplished advocate, and the most eloquent that modern times have produced."

The charge against the prisoners may be shortly stated, that they had conspired to subvert the monarchy, and had set on foot a project of a convention of the people in order to effect it. The Attorney-General in his luminous, but at the same time most voluminous, speech of nine hours' duration — the length of such an elaborate address furnished a strong à priori argument that he would not estabish the treason under the short and simple statute of Edward III. — laboured to prove "that a scheme had been imported from France in the latter end of the year 1791 or 1792, the intent of which was to constitute in London, with affiliated societies in the country, clubs which were to govern this country upon the principles of the French Government, the alleged inalienable, imprescriptible, rights of man, such as they are stated to be, inconsistent in the very nature of them with the being of a king or of lords in a government; deposing, therefore, the moment they come into execution, in the act of creating a sovereign power, either mediately, or immediately, the king, and introducing a republican government, with a right of eternal reform, and, therefore, with a prospect of eternal revolution."

This vast treasonable conspiracy, comprehending an indefinite number of persons, places, and times, was chiefly founded in proof upon documentary evidence, and sought to be established by resolutions, letters, addresses to and from affiliated societies, in Edinburgh, Norwich, Sheffield, and elsewhere, by speeches of members, nay even toasts at anniversary dinners of a seditious character. The Corresponding Society, of which the prisoner Hardy was secretary, and one

Margarot, previously convicted of sedition, president, instituted for the ostensible purpose of procuring a reform of Parliament, included the main body of the supposed traitors. A short summary of this huge mass of written evidence may be useful to show the fearful pressure of the case, from which Erskine had to extricate his client.

A letter from the Corresponding Society, with corrections in Horne Tooke's hand-writing, contained the following significant passage, read, with running comments, by the Attorney-General. "Freedom though an infant makes Herculean efforts. The vipers 'aristocracy' (that is, persons who have got coats upon their backs) 'and monarchy' (we have it yet in England, gentlemen) are panting and writhing under its grasp, may success, peace, and happiness attend those efforts!' Margarot writes from Edinburgh in this fashion: '"Armed associations are, I perceive, now set on foot by the rich, wherefore should not the poor do the same? Are you to wait patiently till twenty thousand Hessians and Hanoverians come to cut your throats, and will you stretch forth your necks, like lambs, to the butcher's knife, and, like lambs, content yourselves with bleating?" A letter from the infamous Paine contained phrases and allusions of still more ominous import. "We heartily unite with you in wishing that the hydra of tyranny and imposition may soon fall under the guillotine of truth and reason." His execrable works having been honoured with the thanks of the society, some extracts were read to show their spirit and tendency. "The minister, whoever he at any time may be, touches Parliament as with an opium wand, and it sleeps obedience! The time is not very distant, when England will laugh at itself for sending to Holland, Hanover, Zell, or Brunswick, for men at the expense of a million a year, who understand neither her laws, her language, nor her interest, and whose capacities would scarcely have fitted them for the office of a parish constable."

"The monarchical plan will not continue many years in this country. The English have found out that as wisdom cannot be made hereditary, power ought not, and that for a man to merit a million sterling a year from a nation, he ought to have a mind capable of comprehending from an atom to a

universe, which, if he had, he would be above receiving the pay."

Delegates from the society for constitutional information in London presented a glowing address to the National Convention of France, and sealed the alliance in French fashion, with a kiss of fraternity.

"Servants of a sovereign people and benefactors of mankind. The sparks of liberty, preserved in England for ages, like the coruscations of the northern aurora, served but to show the darkness visible in the rest of Europe. The lustre of the American republic, like an effulgent morning, rose with increasing vigour, but still too distant to enlighten our hemisphere, till the splendour of the French revolution burst forth upon the nations in the full fervour of a meridian sun."

To show how completely gallicized Mr. Hardy and his fellows had become, an account of some anniversary dinner of the society for constitutional information was read, furnished by their own reporter, with as much seeming complacency as if the proceedings had conduced highly to their credit.

"During the time of dinner, and between the toasts, a numerous band played the popular tunes of 'Ça Ira,' the 'Carmagnol,' the 'Marsellois March,' the 'Democrat,' and a new piece of music, called the 'Free Constitution.'"

The following sentiments met with unbounded applause:

"The Swine of England, the Rabble of Scotland, and the Wretches of Ireland."

"The Armies contending for Liberty."

"May the Abettors of the present War be its victims!"

Mr. Tooke said he hoped it would be the last time that his health should be drunk. His ambition was that hereafter his memory should be given.

The toasts at other convivial meetings appear to have been stil more sparkling and running over with revolt. "The world a republic or a desert!" — "Lord Loughborough, the Earl of Moira, and the other apostates from liberty, and may they enjoy the profits of their apostasy *as long as they live!*" But an abominable placard, by whomsoever composed, in the nature of a play-bill, proved to demonstration the sort of drama these patriots would have performed. "For the be-

nefit of John Bull, La Guillotine, or George's Head in a Basket; Numpy the Third by Mr. Gwelph, being the last time of his appearing in that character." "Tight rope dancing from the lamp-post by Messrs. Canterbury, York, Durham, & Co." — but we will not transcribe more of this handbill's ribald trash.

Not to be outdone in violence by their metropolitan confederates, the missionaries of treason in country towns made inflammatory harangues to their deluded hearers, wishing that the king's head and Mr. Pitt's might be placed on Temple Bar, and passed resolutions that there ought to be immediately a convention of the people, by delegates deputed for that purpose from the different societies of the friends of freedom. Like the French poet, unconsciously talking prose all his lifetime, they discoursed treason without knowing it. Erskine's singular dexterity and address, during the gathering of these dark masses of evidence — the turning over these volumes of sedition — deserve especial notice. The first day was exhausted in the nine hours' explanation of Sir John Scott, and the partial reading of papers found at Hardy's house. Not a word escaped the watchful, wary, advocate, till midnight compelled a discussion on the necessity of adjournment. He then took the high ground of granting a favour to the jury. — "I shall recommend the prisoner at the bar to give that indulgence to the gentlemen under the very peculiar circumstances of the case" (that the jury might have refreshment of food and rest).

When Chief Justice Eyre remonstrated — "I think it is not simply that he may give that indulgence. I think he must ask it, as necessary to his defence," Erskine lowered his tone, and using the proper phrase, replied — "I certainly advise him to ask it."

As the minds of the jurors must have been heated and inflamed by much of what they had heard read, he would not allow them to separate without complaining of the heaps of papers which had been tumbled upon their hands without the slightest opportunity of examination, and artfully wondering how the act of compassing the king's death was to be

collected from that incongruous heap, which the Attorney-General took nine hours to read.

When the proceedings of the convention in Edinburgh were tendered in evidence on the morrow, Erskine objected that the prosecutor must first show that they were approved of by Mr. Hardy, and threw in one of those interlocutory appeals to the jury, so well adapted to win their sympathy:

"I declare, upon my honour, as far as relates to myself, and my friend who is assigned as counsel for the prisoner, we have no design whatever to trespass upon the time and patience of the Court, and your Lordships have seen to-day how little of your time we have consumed: we have no desire upon earth, I appeal to God in it, but to do our best, to do justice to the person your Lordship has assigned us counsel for. I confess I am not very anxious to shut out any evidence—I very probably do not understand it—but I do not see how it bears upon the case. He is charged with compassing and imagining the death of our sovereign lord the king, whose life is dear, my Lord, to all the kingdom; in order to prove that he had from the beginning that wicked intention—for that wicked intention is the foundation of the whole proceeding, and no act can be given in evidence before your Lordships, nor will I sit here silent to hear any act given in evidence that does not go to show the prisoner at the bar had that wicked compassing. When I stand here defending this man, who holds his life under the law (and I am not defending his life only, but my own life and the life of every man in the country), I must take care that the rules of evidence are observed."

In afterwards arguing, hour by hour, some point of law, for Erskine would not abandon the least defensible position without firing a shot, he contrived to insinuate, *ad captandum* addresses to the jury:—

"How many thousands of his majesty's subjects are meant to be brought to this place I cannot tell, for the conspiracy that is alleged goes to the members of every one of these societies. I say, in my judgment upon the evidence that is before the court, every man who has been a member of these corresponding societies, who has been a member of this constitu-

tional society, every man who has been connected with those acts, if the acts constitute a conspiracy to subvert the government, is liable to be put in the same situation with Mr. Hardy, and any thing that is written by any one person belonging to either of these societies would be equally evidence against him."

And, again: —

"How is it possible I should convict witnesses of falsehood, if I cannot be allowed to extract from the witness who the person was to whom he made the communication, and who advised him to give information to some other person? It will be asked, Is it an honourable thing? Is it to be supposed that in this country the law and the liberty of the subject (and I trust that the law and the liberty of the subject will always go together; and I hope in God that the time will never arrive, when the huzzas of popularity shall be against the government and administration, but that the government and administration shall be so conducted as to carry along with them those huzzas of popularity which always attend a government well administered); all I want to know is that, which can expose no man to contumely."

To take off the effect of the infamous play-bill, the reading of which he knew would create a shudder in the jury, Erskine exclaimed with irregular quickness, on the counsel tendering it, "That paper is fabricated by the spies who support this prosecution." With similar tact, when the extracts from Paine's works were read, he interrupted the officer — "You may read the whole book if you please!" With off-hand remarks he would dexterously parry the weight of some massive document or seditious effusion: "I object — not that I care about it. Is your lordship's time to be taken up with a song?" No sooner had a witness, once connected with these societies, been called into the box by the counsel for the crown, than the counsel of the people began cautiously to ascertain his feelings, and increased in the boldness of his tone, as he found the man's willingness to be led. The whole examination forms an admirable study, but we must be content with a few extracts.

"*Q.* Had you any idea by a parliamentary reform in your

own mind, when you became a member, or when you continued there, to touch the king's majesty, or the House of Lords?'—'No; never. I never had that idea.' *Q.* 'Never in your life?'—'No.' *Q.* 'I ask you in the presence of God to whom you will answer, had you any idea of destroying the king or the House of Lords?'—'No; God forbid!'"

"*Q.* 'Then I understand you to say upon the oath you have taken, and subject to the consequences here and hereafter, that there was no such idea, either in your own mind, or from what you knew from others, what they said, and what they did, in the mind of any other of the members?'—'Never.' *Q.* 'Have you any reason to believe—I ask you to look in upon your own soul, when you answer the question,—that, though they might not intend mischief originally, when associated, they began to intend mischief?'—'No, I never did.'"

Reserving his strength for the demolition of the corps of spies, Erskine poured into the phalanx (to use his own simile) not single ball, but canister, grape shot, old nails; every thing noxious was brought into his battery, and hurled around, so as to inflict the utmost possible mischief.

"'Now, mind! did you wish a parliamentary reform, or any alteration in the House of Commons, or in the government any way? Upon your oath (look across to the jury) did you, upon your oath, when you became a member of that society, wish and desire to have any alteration in any part of the government? You need not look at me—I shall hear it well enough—why do you hesitate?—come, cough it up, answer me that upon your oath, are you acquainted with Mr. Dunn of Manchester.' 'No.' 'I should have thought you were.' (Dunn had been convicted of perjury.)

"*Eyre, C. J.*—'Why do you not answer the question?' 'I do not understand you.'

"*Erskine.*—'I am sorry for it; I believe you are the only one in Court that does not—I will put it again to you, because I wish to be civil to you—did you wish a parliamentary reform, or any alteration in the government, when you

became a member of that society?' 'I never wished any thing of the kind.'

"'Look at the jury, do not look so much at me — I have seen enough of you . . . . .'

"'You have an amazing good memory — you have repeated a whole speech a man made at a meeting; but you cannot remember the few words that passed between you and your master; now, try; I will sit down, and give you time.'

"*Eyre, C. J.*—'Why do not you give an answer?' 'I cannot recollect the words, it is so long ago.'

"*Erskine.* —'Then you do not remember the words?' 'I do not.' 'When you have words with a man, it means you had a quarrel. You know I did not ask you what you said to your master, and what he said to you, but what was the quarrel about? You must have a strange memory for a witness, who is to repeat a whole speech, if you do not remember for what you left your master! I wish you would look at those gentlemen, they are very good-looking men.'

"*Eyre, C. J.* —'Then do you recollect what you quarrelled with Mr. Smith about?'

"*Erskine.* —'If your Lordship will excuse me for a moment, I am entitled to have the benefit of this gentleman's deportment.'

"*Eyre, C. J.* —'Give him fair play.'

"*Erskine.* —'He has certainly had fair play; I wish we had as fair play; but that is not addressed to the Court!'

"*Att. Gen.* —'By whom do you mean?'

"*Erskine.* —'I say the prisoner has a right to fair play.'

"*Garrow.* —'But you said it was not said to the Court!'

"*Erskine.* —'But I am not to be called to order by the bar.'"

The by-play of the resolute advocate, when punishing another vile informer, both with the Court, and opposing counsel, places the very man before us.

"'None of your thinking, when you have the paper in your hands.' 'I have not a memorandum of the date.' 'What date have you taken, good Mr. Spy?' 'I do not think upon such an occasion being a spy is any disgrace.'

"*Eyre, C. J.* — 'These observations are more proper, when you come to address the jury.'

"*Att. Gen.* — 'Really that is not a proper way to examine witnesses! Lord Holt held strong language to such sort of an address from a counsel to a witness, who avowed himself a spy.'

"*Erskine.* — 'I am sure I shall always pay that attention to the Court, which is due from me; but I am not to be told by the Attorney-General how I am to examine a witness!'

"*Att. Gen.* — 'I thought you had not heard his lordship.'

"*Erskine.* — 'I am much obliged to his lordship for the admonition he gave me. I heard his lordship, and I heard you, which I should not have heard.'"

Another spy having assumed the name of Douglas, Erskine began with asking, 'What is your true name?'

"'As for taking the name of Douglas, I took it from a playbill.'

"'Pray, how long did you play the part of Douglas?'"

His triumph in demolishing the spies was followed up by a speech on which Tooke has written the note, no less emphatic than true: *This speech will live for ever.* The whole of that splendid composition, equally perfect as a chef-d'œuvre of eloquence, and a master-piece of legal reasoning, should be read and studied by all who would do justice to Erskine's genius, but a few passages must suffice here to teach the scope of his defence. His alarm for the cause he was advocating cannot be evinced more clearly, than by his taking up an untenable position, however brilliantly defended.

"I do therefore positively maintain, not as an advocate merely, but in my own person, that within the letter and meaning of the statute, nothing can be a compassing the death of the king, that would not in ancient times have been a felony in the case of a subject."

After reading the preamble of the statute, 1 William and Mary, deprecating laws and statutes made to inflict extreme punishment, and citing Lord Coke, he adds: —

"But, gentlemen, the most important part of his commentary on this statute is yet behind, which I shall presently read to you, and to which I implore your most earnest atten-

tion, because I will show you by it, that the unfortunate man, whose innocence I am defending, is arraigned before you of high treason, upon evidence not only wholly repugnant to this particular statute, but such as never yet was heard of in any capital trial; — evidence, which, even with all the attention you have given to it, I defy any one of you at this moment to say of what it consists — evidence, which (since it must be called by that name) — I tremble for my boldness in presuming to stand up for the life of a man, when I am conscious that I am incapable of understanding from it, even what acts are imputed to him — evidence which has consumed four days in the reading; not in reading the acts of the prisoner, but the unconnected writings of men, unknown to one another, upon a hundred different subjects — evidence, the very listening to which has deprived me of the sleep which nature requires, which has filled my mind with unremitting distress and agitation, and which, from its discordant, unconnected nature, has suffered me to reap no advantage from the indulgence, which I began with thanking you for, but which, on the contrary, has almost set my brain on fire with the vain endeavour of collecting my thoughts upon — a subject never designed for any rational course of thinking. The high treason charged is the compassing or imagining (in other words the intending or designing) the death of the king, I mean his natural death . . . . . Gentlemen, all I am asking, however, from my argument (and I defy any power of reason upon earth to remove me from it) is this, that the prisoner, being charged with intending the king's death, you are to find whether this charge be founded or unfounded, and that, therefore, put upon the record what else you will, prove what you will, read these books over and over again, and let us stand here a year and a day in discoursing concerning them, still the question must return at last to what you and you only can resolve — is he guilty of that base, detestable intention to destroy the king? Not whether you incline to believe that he is guilty, not whether you suspect, nor whether it be probable, not whether he may be guilty — no, but that provably he is guilty. If you can say this upon the evidence, it is your duty to say so, and you may, with a tranquil con-

science, return to your families, though by your judgment the unhappy object of it must return no more to his. Alas! gentlemen, what do I say? He has no family to return to; the affectionate partner of his life has already fallen a victim to the surprise and horror which attended the scene now transacting. But let that melancholy reflection pass — it should not, perhaps, have been introduced — it certainly ought to have no effect upon you, who are to judge upon your oaths. I do not stand here to desire you to commit perjury from compassion, but at the same time my earnestness may be forgiven, since it proceeds from a weakness common to us all. I claim no merit with the prisoner for my zeal; it proceeds from a selfish principle inherent in the human heart. I am counsel, gentlemen, for myself. In every word I utter, I feel that I am pleading for the safety of my own life, for the lives of my children after me, for the happiness of my country, and for the universal condition of civil society throughout the world."

What art can exceed the dexterity of the pleader's allusions to the publicity of his client's proceedings — to the precedents set him by men in power — to the right of public opinion — and to the fearful, nay, appalling consequences which a verdict of guilty would involve.

"Not a syllable have we heard read in the week's imprisonment we have suffered, that we had not all of us read for months and months before the prosecution was heard of, and which, if we are not sufficiently satiated, we may read again upon the file of every coffee-house in the kingdom. It would be the height of wickedness and injustice to torture expressions, and pervert conduct into treason and rebellion, which had recently lifted up others to the love of the nation, to the confidence of the sovereign, and to all the honours of the state! Why is every thing to be held up as *bonâ fide*, when the example is set, and *malâ fide*, when it is followed? Why have I not as good a claim to take credit for honest purpose in the poor man I am defending, against whom not a contumelious expression has been proved, as when we find the same expressions in the mouths of the Duke of Richmond, or Mr. Burke? I ask nothing more from this observation than

that a sober judgment may be pronounced from the quality of the acts, which can be fairly established, each individual standing responsible only for his own conduct, instead of having our imaginations tainted with cant phrases, and a farrago of writings and speeches, for which the prisoner is not responsible, and for which the authors, if they be criminal, are liable to be brought to justice. . . . .

" Upon the very principle of denying to a people the right of governing themselves, how are we to resist the French, should they attempt by violence to fasten their government upon us? Or what inducement would there be for resistance to preserve laws, which are not, it seems, our own, but which are unalterably imposed upon us. The very argument strikes, as with a palsy, the arm and vigour of the nation. I hold dear the privileges I am contending for, not as privileges hostile to the constitution, but as necessary for its preservation; and if the French were to intrude by force upon the government of our own free choice, I should leave these papers, and return to a profession that, perhaps, I better understand. Upwards of forty thousand persons, upon the lowest calculation, must alike be liable to the pains and penalties of the law, and hold themselves as tenants at will under the ministers of the crown. In whatever aspect, therefore, this prosecution is regarded, new difficulties and new uncertainties and terrors surround it. . . . . .

" The delegates, who attended the meetings, could not be supposed to have met with a different intention from those who sent them; and, if the answer to that is, that the constituents are involved in the guilt of their representatives, we get back to the monstrous position, from which I observed you before to shrink back with visible horror, when I stated it, namely, the involving in the fate and consequence of this single trial every man, who corresponded with these societies, or who, as a member of societies in any part of the kingdom, consented to the meeting which was assembled, or which was in prospect; but, I thank God, I have nothing to fear. I ask you next, if their objects had been traitorous, would they have given them, without disguise or colour to the public, and the government, in every common newspaper? From those hydras, when I see before me such just and honourable

men to hold the balance of justice, it is sufficient for the present one that the legality or illegality of the business has no relation to the crime that is imputed to the prisoner. All their hot blood was owing to their firm persuasion, dictated by conscious innocence, that the conduct of their delegates had been legal, and might be vindicated against the magistrates who obstructed them; in that they might be mistaken. I am not arguing that point at present; if they are hereafter indicted for a misdemeanor, and I am counsel in that cause, I will then tell you what I think of it. We owe obedience to government in our actions, but surely our opinions are free!"

His deadly onslaught on the band of informers is renewed with an appalling caution from the precedent of Lord Stafford's trial, where a legal murder was committed on the faith of perjured testimony.

"Mr. Groves professed to speak from notes, yet I observed him frequently looking up to the ceiling whilst he was speaking, when I said to him, 'Are you now speaking from a note? Have you got any note of what you are now saying?' He answered, 'Oh, no; this is from recollection.' Good God Almighty! recollection mixing itself with notes in a case of high treason! He did not even take down the words; nay, to do the man justice, he did not even affect to have taken the words, but only the substance, as he himself expressed it. Oh, excellent evidence! The substance of words taken down by a spy, and supplied, when defective, by his memory! But I must not call him a spy, for it seems he took them *bonâ fide* as a delegate, and yet *bonâ fide* as an informer. What a happy combination of fidelity! faithful to serve and faithful to betray! correct to record for the business of the society, and correct to dissolve and to punish it!... The last of these precedents, the case of Lord Stafford, and all the proceedings upon it, were ordered to be taken off the file and burnt, to the intent that the same might no longer be visible in after ages; an order dictated no doubt by a pious tenderness for national honour, and meant as a charitable covering for the crimes of our fathers. But it was a sin against posterity; it was a treason against society; for, instead of commanding them to be burnt, they should rather

have directed them to be blazoned in large upon the walls of our courts of justice; that, like the characters deciphered by the prophet of God to the eastern tyrant, they might enlarge and blacken in your sights, to terrify you from acts of injustice."*

It could not be, but that such a speech should be enthusiastically received. So strongly prepossessed, we are told, were the multitude in favour of the innocence of the prisoner, that, when Erskine had finished his speech, an irrepressible acclamation pervaded the court, and reached to an immense distance round. The streets were seemingly filled with the whole of the inhabitants of London, and the passages were so thronged that it was impossible for the judges to get to their carriages. Erskine had been so completely overpowered by his exertions, that for ten minutes before the close he could only whisper to the jury†, but the stillness was so intense that not a syllable of that emphatic whispering escaped the ear. He went out and addressed the multitude, desiring them to confide in the justice of the country; reminding them, that the only security of Englishmen was under the inestimable laws of England, and that any attempt to overawe, or bias them, would not only be an affront to public justice, but would endanger the lives of the accused. He then besought them to retire, and in a few minutes there was scarcely a person to be seen near the court.

There followed other decisive tokens of success of a less pleasing character,—the increased asperity of the counsel opposed to him, and the more decided tone of the Chief Justice in repressing the petulance of victory. As the advocate of an apparently desperate case, he might seem to require, and had obtained, great indulgence, which henceforth was confined within narrower limits. When eagerly attempting, by the examination of willing witnesses, to rivet the favourable impression he had made on the jury, he was suddenly brought to a check.

"'Was it your intention, as far as you must be acquainted with your own objects, if you were disappointed in the effect which you expected, to use force or violence?'

* State Trials, vol. xxiv. † Major Cartwright's Memoirs.

"*Attorney-General.*—'Please to ask him what his intention was.'

"*Erskine.*—'Be so good as to hear the question out. I do not like to be interrupted in the middle of a question.'

"*Eyre, C. J.*—'You have not asked the witness one question yet, which has not been irregular.'

"*Erskine.*—'How am I to ask a witness a question, touching a particular point, without leading him in some measure? I do not mean to put the answer in his mouth. I will pursue the question in the very way I was going to do, and will argue it with the gentlemen.'

"*Attorney-General.*—'It is not worth arguing.'

"*Erskine.*—'Then it is not worth interrupting me in this way.'

Though cut off for the future from these irregular sallies, Erskine succeeded in proving by the most abundant evidence the peaceable, quiet, disposition of his client. He was described by several, as one "that feared God and honoured the king;" and the high sanction of Mr., afterwards Sir Philip Francis, gave strength to the opinion, that he was a remarkably reasonable, temperate man. Some of his own business-like letters might well excite a contemptuous smile, as proceeding from the leader of a band of traitors. "I have sent you," writes the careful tradesman, "Margarot's and Skirving's indictment, with two copies of the pamphlet on brewing; he is a member of our society, the author; if you approve of it, you may put it in practice, and be a great saving to many families, also a diminution of the revenue; for every one brewing their own beer pay no duty for it!"

In a similar spirit a brother shopkeeper spoke to the goodness of his character. "He made me a pair of boots very excellent, and cheap;" while the minutes of the society showed an equal attention to his craft: "To be sent a donation of one thousand pair of shoes to the soldiers of liberty."

On the principle of nothing but leather from a son of Crispin, an inference may easily be drawn from this grant, that the secretary was a shoemaker. Had the personal character of this busy, seditious mechanic been more dangerous, the result might have been different. After a calm and mer-

ciful exposition of the law of treason by Chief Justice Eyre, worthy of that tribunal which should be above all feeling and superior to passion, the jurors withdrew on the eighth day to consider the most important case, that had ever been submitted to the judgment of a jury, since the passing of the statute of Edward, and in three hours returned the judicious verdict of acquittal.

Even those who were most opposed to the principles of the reformers strongly felt that their own and every man's security was involved in the issue of the trial*; and they might have adopted the language of Dr. Johnson on a similar occasion: "I am glad these persons were not convicted of this constructive treason, for, though I hate them, I love my country, and I love myself."

The next person put upon his trial to answer the charge of high treason, was of a character, station, and intellect far superior: a man, equally paradoxical in his conduct, opinions, and fortunes, who stands prominently forward among the most remarkable spirits of his age: a gentleman by birth and manners, yet a demagogue: a clergyman and lover of literature, and yet one who haunted the hustings — John Horne Tooke. Cool and prompt, ready at repartee, and fond of notoriety, he trod the boards of the Old Bailey, like some amateur actor pleased with his part and resolved to make the most of it, even though the catastrophe should terminate in his death. After the acquittal of Hardy, the reverend agitator would have deprecated his not being brought to trial as a personal misfortune. It is impossible to read this grave state prosecution without frequently indulging in an involuntary smile. From the constant merriment, which rewarded his sallies, it might be guessed that a madder wag never stood at the bar; and yet he rarely laughed himself, but glanced around from his keen and arch eyes a satirical look of triumph.

The moment he was ushered into the dock, he began with the air of an aggrieved individual, as the complaining party: "'My Lord, I beg leave to represent to the Court that

* Field's Life of Dr. Parr.

we have just come out of a very confined and close hole, and the windows, now opened at our backs, expose us to much cold air; that our health, particularly my own, will be considerably endangered, and most probably we shall lose our voices, before we leave the place: I shall therefore request of the Court to be dismissed as soon as their convenience will permit.'"

When asked how he would be tried, he eyed the Court for some seconds with an air of significant meaning, which few assumed better, and, shaking his head emphatically, answered, "I would be tried by God and my country! But"—there was no occasion to fill up the break—how much he feared that he should not.

Being allowed, as an indulgence, to sit by his counsel, the intractable prisoner told the Court, "I cannot help saying that, if I were a judge, that word, 'indulgence' should never issue from my lips. My Lord, you have no indulgence to show; you are bound to be just, and to be just is, to do that which is ordered."

Chief Justice Eyre, a model of judicial urbanity, still allowed him the seat merely as an indulgence, on the ground of his infirm health. Once admitted to the bar-table, he made free use of their privilege to inflict the bastinado with his tongue. On the question of adjournment, he told the Court, in a tone of triumph, that if the jury went unshaved and unshirted, so must the judges; but he offered to shorten a probable trial of two hundred hours, by admitting every thing he had ever said, written, or done. As a set-off against the abuse of king and lords in pamphlets, he was ready to produce an abuse of himself printed on earthenware. With regard to the treasonable songs, he would have one of them sung in court to see if there was any thing seditious, *Ça Ira*-like, or resembling the Marsellois Hymn, in the tune. Refreshing himself with a pinch of Strasburgh, he would often bandy law points with the judge, and, if worsted, apologise by saying that he was only a student of forty years' standing. But he not unfrequently rose a winner. Having objected to a particular piece of evidence, he was reminded by the Court that, if there were two or three links in the chain, they must

go to one first, and then to another, and see whether they amounted to evidence. Horne Tooke demurred to this: —

"'I beg your pardon, my Lord, but is not a chain composed of links, and may I not disjoin each link, and do not I thereby destroy the chain?'

"*Eyre, C. J.* — 'I rather think not, till the links are put together, and form the chain.'

"*Horne Tooke.* — 'I rather think I may, because it is my business to prevent the forming of that chain!'"

As the trial proceeded, his strong sense of humour seemed to gather point and pungency from the dangerous novelty of his position. It was proved that the society had expressed approbation of certain proceedings in the National Assembly, ergo it was Republican. "Egad," said Tooke, "it is lucky we did not say there were some good things in the Koran, or we should have been charged with Mahometanism!"

A perfect master of sarcasm and irony, he confounded several witnesses for the prosecution with all the skill and address of a veteran lawyer. No coup-de-théâtre was ever more sudden, or complete, than his method of mortifying Beaufoy when he sought to disclaim all acquaintance, by affecting to recall his memory — "the gentleman's memory required so much flapping" — and asking, whether it was not about the time when he complained he could not sleep, because Mr. Pitt refused to return his bow. It was the invention of the moment to vex a vain person, whom he suspected of proving a false friend.

The haughty premier himself is said to have quailed before the searching scrutiny of his former fellow-reformer. When another witness to character replied to a question concerning his religion — "I never thought you had any religion at all" — the quondam divine recovered from the blow by a quip: "But you did not suspect, that I would eat little children before they were dressed."

When Mr. Sheridan deposed that he had moved a moderate resolution approving of the French Revolution, which was opposed by Tooke as not sufficiently qualified, the ready politician exclaimed: "I beg the Attorney-General will observe *that:* I moderated the moderator."

Having elicited that he was generally received at public meetings with hisses and disapprobation, he gave a knowing nod to the jury, and explained: "My question upon that head was to show, that I was likely to have very troublesome subjects, after I had deposed our lord the King, for I was constantly received with disapprobation."

As an instance of his ready assurance, Horne Tooke used to relate, that he was once asked at a levee by George the Third, whether he played at cards, and answered, "I don't know a king from a knave." The repartee reads, however, like an *impromptu fait à loisir*, and, if ever made, was one of those *double entendres*, in the use of which that shuffler in words prided himself, for he played with syllables, as at whist, an excellent rubber.

For the first time in his life, Erskine seemed to play a subordinate part in a court of justice, and to be content with the office of second to one so perfect in the art of controversial duelling. It was only when the prosecution had closed, that he resumed his habitual character, and stepped forth alone into the lists. The circumstance which weighed most against his dexterous friend was his use of strong and ambiguous language; his character as a hater of both Whig and Tory, wishing "a plague on both their Houses;" the mystery in which he shrouded his sayings and doings, the uncertainty of his objects and designs. With gentle hand, Erskine lifted up the mantle, in which the scheming philologist had been muffled, explained away his double meanings, and, catching the tone of the humorist, cast an air of ridicule over the proceedings. The warmth of his eulogy shows how deeply he had been impressed with admiration of his client's abilities.

"Yet this gentleman, greatly advanced in years, and declining in his health, who was shut up at this time, and long before, within the compass of his house and garden at Wimbledon, where he used to wish an act of parliament might confine him for life; who was painfully bestowing a greater portion of his time to the advancement of learning than the rudest health could with safety bring to it; who was intensely devoted to researches, which will hereafter astound, and will not soon be forgotten by, the world; who was at

that very moment engaged in a work, such as the labour of man never before undertook, nor perhaps his ingenuity ever accomplished; who had laid out nearly one hundred pounds (rather a specimen of bathos) in packs of cards to elude, by artifice and contrivance, the frailty of memory, and the shortness of life, otherwise insufficient for the magnitude of his pursuit, who never saw the Constitutional Society, but in the courtesy of a few short moments, after dining with some of its most respectable members, and who positively objected to the very measure, which is the whole foundation of this prosecution, is yet gravely considered to be the master-spirit which was continually directing all the movements of a conspiracy, as extensive as the island, the planner of a revolution in the government, and the active head of an armed rebellion against its authority. Gentlemen, is this a proposition to be submitted to the judgment of honest and enlightened men, upon a trial of life and death! Why, there is nothing in the Arabian Nights, or in the Tales of the Fairies, which is not dull matter of fact compared with it!"

Having dexterously coloured the pursuits of his Machiavelian and intelligent client, the clever orator thus ably explained away the *double entendres* in which he delighted:

"Filled with indignation that an innocent man should be devoted to a prison, for treading in the very steps which had conducted the Premier to his present situation, Mr. Horne Tooke writes 'that if ever that man should be brought to trial for his desertion of the cause of parliamentary reform, for which Mr. Sinclair was to suffer, he hoped the country would not consent to send him to Botany Bay.' Gentlemen, I have but one remark to make on this part of the letter. Mr. Tooke is not indicted for compassing and imagining the death of Mr. Pitt.

"The alarm of ministers invested the most frivolous circumstances with mystery, and design against the State. Of this we have a notable instance in a letter written by Mr. Joyce to Mr. Tooke on the day Hardy was arrested, which, being intercepted, was packed up into the green box, and reserved as evidence of the plot. The letter runs thus — 'Hardy and Adams were taken up this morning by a king's messenger and all their books and papers seized;' and then,

following a long dash, 'Can you be ready by Thursday?' This letter, gentlemen, is another instance of caution against vague suspicions; the Red Book was not a list of persons to be saved in opposition to the Black Book of those to be sacrificed; but Mr. Tooke having undertaken to collect from the Court Calendar a list of the various offices and pensions bestowed by Mr. Pitt on Mr. Pitt's relations, friends, and dependants; and being too correct to come out with a work of that magnitude and extent upon a short notice, had fixed no time for it, which induced Mr. Joyce, who was impatient for its publication, to ask if he could be ready with it by Thursday? Another curious circumstance of similar importance occurred about the same time, which I marvel has not appeared in evidence before you. A spy came into the society one night to see what he could collect, when there happened to be present a Mr. Gay, a man of large fortune and a great traveller. This Mr. Gay, in the course of his travels had found a stone inscribed by Mr. Stuart as the end of the world; but, resolving to push on further, and to show his contempt of the bounded views of former discoveries, wrote upon it, 'This is the beginning of the world,' treating it as the ground from which he meant to start upon his tour. The plan being introduced for consideration, while Mr. Gay was present, Mr. Tooke said, 'Look ye, gentlemen, there is a person in the room disposed to go greater lengths than any of us would choose to follow him.' This allusion to the intrepid traveller was picked up by the spy, as evidence of the plot, and, if I had the rummaging of the green boxes, I would undertake to find the information among the papers."

Erskine could now venture to submit the case as a clear, short proposition, and to identify himself in feeling with his client.

"The matter for your consideration is a mere matter of fact: 'Has the prisoner conspired with others to depose the King, and to subvert by force the government of the kingdom?' I cannot conclude without observing that the conduct of this abused and unfortunate gentleman, throughout the whole of the trial, has certainly entitled him to admiration and respect. I had undoubtedly prepared myself to conduct

his cause in a manner totally different from that which I have pursued; it was my purpose to have selected those facts of the evidence only by which he was affected, and, by a minute attention to the particular entries, to have separated him from the rest. By such a course I could have steered his vessel safely out of the storm, and brought her without danger into a harbour of safety, while the other unfortunate prisoners were left to ride out this awful tempest. But he insisted on holding out a rope to save the innocent from danger, he would not suffer his defence to be put upon the footing, which discretion would have suggested. On the contrary, though not implicated himself in the alleged conspiracy, he has charged me to waste, and destroy my strength to prove, that no such guilt can be brought home to others. I rejoice in having been made the humble instrument of so much good; my heart was never so much in a cause."

He had not any reason for anxiety. In less than ten minutes the jury pronounced an acquittal, and the shouts of the multitude told their belief that all danger was at an end. At the conclusion of the trial, Tooke gave a public testimony of his approbation in open Court, and invited his counsel to become his honoured guest at Wimbledon. A feast was held there yearly on the anniversary of the acquittal, at which Erskine was a regular attendant, even after he had been ennobled.

One day, we are told*, as he was walking in the garden with his host, he exhibited an instance of agility by springing over the *ha-ha* to converse with Mr. Pitt, and some of the ministers, who chanced to be then assembled in the adjoining grounds of Dundas. What a curious group would have met together on that neutral ground, had the infirmities of Tooke permitted him to follow — prosecutor, witness, counsel, and he whom Wyndham termed, with more point than fairness, the acquitted felon!

Thelwall's trial was the last on which the ministers ventured. It has not been included in the State Trials, and the omission is to be regretted, as the character of the prisoner

* Stevens' Memoirs of H. Tooke.

was daring in the extreme, and the defence of his advocate, though disfigured by bad reporting, is replete with stirring appeals to the feelings, less encumbered with extracts from authorities than either of his preceding orations, bold, pathetic and original.

Thelwall, a lecturer on rhetoric, was ambitious to defend himself, and the following year published a speech intended to have been spoken, which, though it failed in legal reasoning, contained some effective passages, as the following apostrophe will show: —

"Immortal memory of our brave ancestors! Do I stand here to defend my life on a charge of high treason, against this string of possibilities, constructions, and improbable contingencies! and am I still in Britain!"

The prudent advice of friends deterred him from committing the proverbial folly of becoming his own defender, but could not prevent him from constantly interfering, and keeping up an incessant correspondence with his counsel. Dissatisfied with a part of the case, he passed a slip of paper, "*I will plead my own cause;*" to which Erskine scribbled — "*If you do, you'll be hanged.*" To this Thelwall instantly gave the quibbling rejoinder, "*Then I'll be hanged if I do!*"

The caution was not uncalled for, his individual guilt appearing of the darkest dye. Hardy had not been shown to have uttered a single contumelious expression against the king or government; and Tooke had brought evidence to prove, that his general opinions, though veiled in mystery, were favourable to the aristocracy and the throne. But the sayings and writings of this prisoner bore a stamp, that could not be effaced, of criminal hardihood. It was sworn by an informer, to whose doubtful testimony the republican bearing of the man seemed to give some confirmation, that Thelwall had said at one of the meetings, taking up a pot of porter in his hand and blowing off the head, "*This is the way I would have all kings served!*" He was reported to have given as a toast: "*The lamp iron at the end of Parliament Street, to be covered with the Treasury Bench!*" A letter was found in his study, in his hand-writing, containing this plain-spoken passage, "I am a republican, and a true

sans-culotte. The Americans have too great a veneration for property, too much religion, and too much law." Well might the single-minded tradesmen of Norwich inquire of a Society, which such a downright writer stimulated, "whether it was their intention to rip up monarchy by the roots, and plant democracy in its stead?"

Adroit in discovering methods to excite the people, he delivered lectures at the Minories, taking the advice of counsel how best to evade the law; and there he crushed together in his political crucible, religion, loyalty, and social order. Some of his democratic vagaries bordered on the burlesque. He expressed great surprise in one of his lectures at the tragedy of *Venice Preserved* being announced to be played on the next night, and invited his friends to meet him in the pit, declaring that he would have a book of the play in his hand, and that, if any of the stirring passages were omitted, he should insist on their being spoken. The play was acted without mutilation to the chagrin of the ring-leader and his followers, who strained their throats in applauding the patriotic virtue of Pierre, as when, before marshalling the conspiracy, he exclaims that he is a villain—

> "To see the sufferings of my fellow creatures
> And own myself a man; to see our senators
> Cheat the deluded people with a show
> Of liberty, which yet they ne'er must taste of;
> Yet, whom they please, they lay in basest bonds."

There were found on Thelwall's person, when apprehended, resolutions to be proposed at a meeting of the Corresponding Society at Chalk Farm in the spring of 1794, of the most revolutionary description. To reconcile with innocence the hallucinations of such a political fanatic, required consummate art and ability in the advocate, but these spells of his power Erskine summoned at will. No publication of the letter was proved, and the most violent parts of the harangues could only be attested by spies, on whose unhappy heads the counsel emptied all the vials of his wrath.

"Even if the very phrase had not been exaggerated, if the particular sentence had not been coloured or distorted, what allowance ought there not to be made for infirmity of temper,

and the faults of tongues, in a period of intense excitement. Let me ask who would be safe, if every loose word, if every vague expression, uttered in the moment of inadvertence, or irritation, were to be admitted as sufficient evidence of a criminal purpose of the most atrocious nature. In the judgment of God we should indeed be safe, because he knows the heart, he knows the infirmities with which he hath clothed us, and makes allowance for those errors which arise from the imperfect state of our nature. From that perfect acquaintance which he possesses of our frame, he is qualified to regard in their proper point of view the involuntary errors of the misguided mind, and the intemperate effusions of the honest heart. With respect to these, in the words of a beautiful moral writer, 'The accusing angel, which flies up to heaven's chancery, blushes as he gives them in, and the recording angel as he writes them down, drops a tear upon the words, and blots them out for ever.' Who is there, that in the moment of levity or of passion has not adopted the language of profaneness, and abused the name even of the God whom he adores? Who has not, in an unguarded hour, from a strong sense of abuse, or a quick resentment of public misconduct, inveighed even against the government to which he is most firmly attached? Who has not, under the impulse of peevishness and misapprehension, made use of harsh and unkind expressions, even with respect to his best and dearest relations — expressions which, if they were supposed to proceed from the heart, would destroy all the affection and confidence of private life? If there is such a man present so uniformly correct in expression, so guarded from mistake, so superior to passion, let him stand forth, let him claim all the praise due to a character so superior to the common state of humanity. For myself I will only say, I am not that man."

The jury, with doubt and hesitation, yielded to this candid appeal, and their verdict, after a delay of more than two hours, was received, says a friendly witness, with a delirious scream of joy. The streets blazed with flambeaux, and Erskine was drawn in his chariot by the huzzaing populace to his house in Serjeant's Inn. From a window there, with Gibbs on his right hand, he harangued the people. He apo-

logised for having declined to answer on the last night, when he was asked what time he thought the trial would end; "a British jury were not to be anticipated as to the time of their deliberation. Injured innocence," he exclaimed, "still obtains protection from a British jury, and I am sure in the honest effusions of your heart, you will retire in peace, and bless God!"

This, we may readily believe, was the proudest and happiest epoch of his life. Greedy of popular applause, faithful to his party and political principles, eager for professional fame, rejoicing in the triumph of the verdict, not superior to the pleasure of mortifying the haughty, disparaging, Pitt, he drained the cup of mental intoxication at the close of these trials. Day by day he had stood almost alone, from early morn to midnight—

"With darkness and with dangers compassed round"—

unexhausted, contending for a great principle, the guardian of untold numbers—cheered by the presence of admiring senators, and an applauding people—winning, almost against their will, the sympathies of the jury, and combating always fearlessly, often successfully, with the Court. He had proved to the scoffers of the House of Commons the might of his arm in his own proper field, had caught encouragement from the looks of Fox and his little band; the most supercilious and jealous of which (even Grey and Sheridan), must now own him for at least their equal. He had done more for freedom than any lawyer since Somers, and had gained a series of victories unexampled in their importance to the cause of constitutional law. Even among those most opposed to him in politics might be numbered many who approved his positions, and rejoiced in the verdict. The dark and ensanguined mass of clouds, which loomed over the horizon at the end of the year 1794, had been dispelled by his breath.

Additional stores of wealth, and higher rewards of greatness, were in store for the popular lawyer. But never on that uneasy seat the woolsack, or girt with the insignia of the order of the Thistle, could he feel so buoyant or exalted in his own esteem, as on the termination of these delightful toils.

Weariness, aching, exhaustion—how could they be felt by one of his temperament, so triumphant, and so applauded!

After this memorable period Erskine, with two exceptions, always appeared as the champion of the accused. It never fell to his lot to conduct a state prosecution, save on those rare occasions in which the crown did not appear by its own proper officers. He thus attended in the year 1797, on the retainer of a private society, to prosecute Paine for his blasphemous publication of the second part of the "Age of Reason." As he had before evinced a spirit of chivalry in defending this worthless client, to his own private detriment and pecuniary loss, that the voluntary outlaw might not fall a victim to prejudice, he now displayed a strong sense of religion, worthy of his education and character. "The people of England," he said emphatically, "are a religious people, and, with the blessing of God, so far as it is in my power, I will lend my aid to keep them so." From this noble apology for our faith it may be well to extract one short passage of simple beauty: —

"I can conceive a distressed, but virtuous man, surrounded by his children, looking up to him for bread, when he has none to give them, sinking under his last day's labour, and unequal to the next, yet still supported by confidence in the hour when all tears shall be wiped from the eyes of affliction, bearing the burden laid upon him by a mysterious Providence, which he adores, and anticipating with exultation the revealed promises of his Creator, when he shall be greater than the greatest, and happier than the happiest of mankind."

The history of Erskine's high-minded conduct in the second prosecution brief which he held for the Society cannot be so well told as in his own discursive, but highly interesting, narrative, contained in the following letter to the editor of the State Trials:

"Buchan Hill Farm, February 7th, 1819.

"Dear Sir,

"You are well justified in requiring to know why, in the case of the King against Williams, for publishing Paine's Age of Reason, after receiving and acting under a general retainer, and convicting the defendant, I not only refused to move for judgment

against him, but had cancelled the retainer altogether. The inviolable obligation of retainers, according to the rules of the profession regarding them, is of immense importance to the public, and in the British state trials everything should be found, which connects itself with the liberty and security of the people, in all courts of justice, which essentially depend upon the integrity and independence of the bar. I believe no member of the profession had ever the occasion of manifesting more strongly than myself, his sense of the subject's right to choose his own counsel against all power of influence in the scale against him. When Attorney-General to the Prince of Wales (now Prince Regent), I was retained by Thomas Paine in person to defend him on his approaching trial for publishing the second part of his 'Rights of Man;' but it was soon intimated to me by high authority, that it was considered to be incompatible with my situation, and the prince himself, in the most friendly manner, acquainted me, that it was highly displeasing to the King, and that I ought to endeavour to explain my conduct, which I immediately did, in a letter to *his Majesty himself;* in which, after expressing my sincere attachment to his person, and to the constitution of the kingdom attacked in the work which was to be defended, I took the liberty to claim, as an invaluable part of that very constitution, the unquestionable right of the subject to make his defence by any counsel of his own free choice, if not previously retained, or engaged from office by the Crown, and that there was no other way of deciding, whether that was, or was not, my own situation, as Attorney-General to the prince, than by referring, *according to custom*, that question to the bar, which I was perfectly willing, and even desirous to do. In a few days after, I received, through my friend, the late Admiral Paine, a most gracious message from the prince, expressing his deep regret, in finding himself obliged to accept my resignation, which was accordingly sent. But I owe it to his Royal Highness, to express my opinion, that, circumstanced as he was, he had no other course to take in those disgraceful and disgusting times, and that my retainer for Paine was made a pretext by the king's ministers for my removal; because my worthy and excellent friend, Sir Arthur Piggot, was removed from the office of Solicitor-General to the prince at the very same moment, although he had nothing whatever to do with Mr. Paine or his book. The fact is, that we were both, I believe, at that time members of a society for the reform of Parliament, called 'The Friends of the People!'

"It would, however, be most unjust, as well as ungrateful to the Prince Regent, not to add, that in a few years afterwards, his

Royal Highness, of his own mere motion, sent for me to Carlton House, while he was still in bed under a severe illness, and, taking me most graciously by the hand, said to me, that though he was not at all qualified to judge of retainers, nor to appreciate the correctness, or incorrectness, of my conduct in the instance that had separated us, yet, that being convinced I had acted from the purest motives, he wished most publicly to manifest that opinion, and therefore directed me to go immediately to Somerset House, and to bring with me for his execution the patent of Chancellor to his Royal Highness, which he said he had always designed for me: adding, that owing to my being too young, when his establishment was first fixed, he had declined having a Chancellor at that time, that during our separation he had been more than once asked to revive it, which he had refused to do, looking forward to this occasion; and I accordingly held the revived office of Chancellor to the Prince of Wales, until I was appointed Chancellor to the king, when I resigned it in conformity with the only precedent in the records of the Duchy of Cornwall; viz., that of Lord Bacon, who was Chancellor to Henry, Prince of Wales, and whose resignation is there recorded, because of his acceptance of the Great Seal in the reign of King James the First.

"I have troubled you with this short history for three reasons. First, to show that I do not think *lightly* of retainers; secondly, because the memory of acts that are highly honourable to men who are called to the government of nations, is not only justice to them, but useful to be treasured up in the minds of people; thirdly, because it may remind some, who are but too apt to think that unprincipled subserviency is the surest road to preferment—that honesty is the best policy; since, when the Great Seal was afterwards vacant, his Royal Highness, in conjunction with my revered friend Charles Fox, considered my succession as indispensable in the formation of the new administration; presented me with a seal, with my initials and a coronet engraved on it, and desired me to take Restormel Castle as the designation of my title as belonging to the Duchy of Cornwall, and the seat of the most ancient Dukes of Cornwall.

"Having convicted Williams, as will appear by your report of his trial, and before he had notice to attend the court to receive judgment, I happened to pass one day through the Old Turnstile from Holborn, on my way to Lincoln's Inn Fields, when, in the narrowest part of it, I felt something pulling me by the coat, and, on turning round, I saw a woman at my feet, bathed in tears and emaciated with disease and sorrow, who continued almost to drag

me into a miserable hovel in the passage, where I found she was attending upon two or three unhappy children in the confluent small-pox, and in the same apartment, not above ten or twelve feet square, the wretched man I had convicted was sewing up little religious tracts, which had been his principal employment in his trade; and I was fully convinced that his poverty, and not his will, had led to the publication of this impious book, as without any kind of stipulation for money on my part, he voluntarily and eagerly engaged to find out all the copies in circulation, and to bring them to me to be destroyed. I was most deeply affected with what I had seen, and feeling the strongest impression that it afforded a happy opportunity to the prosecutors, of vindicating, and rendering universally popular, the cause in which they had succeeded, I wrote my opinion to that effect, observing (if I well remember) that mercy being the grand characteristic of the Christian religion, which had been defamed and insulted, it might be here exercised not only safely, but more usefully to the object of the prosecution, than by the most severe judgment, which must be attended with the ruin of this helpless family.

"My advice was most respectfully received by the Society, and I have no doubt honestly rejected, because that most excellent prelate, Bishop Porteus, and many other honourable persons, were concerned in rejecting it; but I had still a duty to perform, considering myself not as counsel for the Society, but for the Crown. If I had been engaged for all or any of the individuals composing it, prosecuting by indictment for any personal injury punishable by indictment, and had convicted a defendant, I must have implicitly followed my instructions, however inconsistent with my own ideas of humanity or moderation, because every man, who is injured, has a clear right to demand the highest penalty which the law will inflict; but, in the present instance, I was in fact not retained at all, but responsible to the Crown for my conduct. Such a voluntary Society, however respectable or useful, having received no injury, could not erect itself into a *custos morum*, and claim a right to dictate to counsel, who had consented to be employed on the part of the king for the ends of justice only. The bar, indeed, had, in my own experience, rejected a retainer of that anomalous description. Lord Stopford, an officer in the First Regiment of Guards, being on guard at the palace on the king's birth-day, having thought it his duty to remove obstructions, and having laid hold of a gentleman in the throng, had an action brought against him; and the regiment approving his conduct, having resolved to defend him at their own expense, which they had a clear right to do, directed me

to be retained to defend him, but the late Mr. Lowten, their solicitor, instead of entering the retainer for Lord Stopford, entered it for the First Regiment of Guards, and the Duke of York, as their Colonel, afterwards consulted with me on the subject; but, before the trial, the plaintiff came in person to my chambers with his attorney to retain me, and being informed I was retained against him, desired to inspect my retainer-book, when seeing no other retainer than for the First Regiment of Guards, his attorney objected to its obligation, and requested me as usual to leave it to the decision of the bar, who considering it as no retainer, I was obliged to receive that of the plaintiff, and afterwards, as his counsel, obtained a verdict against Lord Stopford, in Westminster Hall. Upon the present occasion, therefore, I made up my mind to act for myself; and not only not to pray judgment, but to cancel the irregular retainer altogether, by striking it out of my book, and judgment being afterwards prayed by another counsel, the defendant was sentenced, as must have been expected, to a severe judgment, but Mr. Perry, to his great honour, exerting himself for the protection of his helpless family, raised a considerable sum of money for their support, and without which they must have perished.

"Whether I was right or wrong, I will not undertake to say; but I am most decidedly of opinion, that if my advice had been followed, and the repentant publisher had been made the willing instrument of stigmatizing, and suppressing what he had published, Paine's Age of Reason would never again have been printed in England, whereas I have been informed, that it has since been again in circulation, and that a prosecution by the Attorney-General is now pending for its suppression, of the merits of which, however, or of the guilt or innocence of the person accused, I am wholly ignorant, and can only wish that justice may be done.

"I have the honour to be, with great regard,

"Your faithful humble servant,

"ERSKINE."

"To T. A. Howell, Esq."

From a generous anxiety to serve a political friend in the hour of trial, Erskine adventured a new part, and placed himself in a quarter of the court, where he had never stood before, the witness-box. Mr. O'Connor, an United Irishman, the nephew of Lord Longueville, more largely implicated in the rebellion of 1798, than his high Whig connexions

in England suspected, had been apprehended in disguise, when about to sail for France in company with an Irish priest, O'Coigley, the bearer of treasonable dispatches to the French Directory. The whole party were tried at Maidstone for high treason under a special commission over which Sir Francis Buller presided*; and Erskine, with a host of parliamentary friends—Fox, Grey, Sheridan, Lord Thanet, and Burdett, hastened down to give their important attestation to his character. By his own free choice the advocate was merged in the witness, but it would savour of flattery to say that he filled the novel post as well. His volatile self-confidence, and acute perception, betrayed him into volunteering too wide a statement (the common fault of an over-clever witness) and overtopping his part.

"You know Mr. O'Connor?—I do.

"How long have you known him?—I have known Mr. O'Connor between two and three years when he was last in England before this time, and I live a great deal with those, with whom Mr. O'Connor lives much, when he is in this country.

"Give me leave to ask who those friends are?—Mr. O'Connor's friends in this country are principally those persons who are my friends——

"*Mr. Attorney-General.*—The question put was whether Mr. Erskine knew Mr. O'Connor?

"*Mr. Plumer.*—Mr. Erskine said he lived principally with his friends—I asked him therefore who those friends were?

"*Mr. Erskine.*—I do not stand here to argue the admissibility of evidence, and, you may depend upon it, I shall strictly adhere in giving answers to questions. Mr. O'Connor has principally lived with persons of high rank in the public world—Mr. Fox, Mr. Grey, Mr. Sheridan, all that class of gentlemen, with whom I have acted in public life in parliament, and with many other persons too many for me to recollect at this moment.

"Was that the case this last time he was in England as

* Life of Mr. Justice Buller.

well as upon former occasions?—Certainly so; and in consequence of that I know Mr. O'Connor's character as well as I can be acquainted with the character of any gentleman, who lives principally in another country, but whom I have seen frequently here.

"Shall I beg the favour of you to state what that character is?—In my opinion the best character that any man can possibly possess. I have a sincere regard and esteem for Mr. O'Connor founded upon my opinion and belief that he is a man of the strictest honour and integrity, not only capable of, but who has made, great sacrifices to what he thinks right; if there be any more prominent feature in his character than another, as far as I am acquainted with it, and I am much acquainted with it, it is a noble mindedness and a high spirit of honour; and I, therefore, feel myself, not only entitled, but bound upon my oath, to say, in the face of God and my country, as a British gentleman, which is the best thing any man can be, that he is incapable in my judgment of acting with treachery or duplicity to any man, but most of all to those, for whom he professes friendship and regard; and I do know positively of my own knowledge that he has been in the constant course of professing, not merely regard, but admiration and enthusiasm, for the persons whose names I mentioned.

"Did you ever observe any change of that sentiment in Mr. O'Connor towards them?—So help me God, never.

"As far as fell within your knowledge, did you know that he had any other connexions in this country, besides the gentlemen you have mentioned?—Upon my oath I had no reason to believe that he had.

"Whether you ever observed, during the latter part of the time that you knew him, any difference either upon public or private subjects, between himself and you, or any other gentlemen with whom he associated here?—Quite the reverse. Recollecting the station which I hold in the law, I should be little desirous to urge upon the Court any thing that could be at all questionable in point of evidence, otherwise I could, if the Court thought it right, state many, many instances of his persevering in the same opinions and in the

same regards, this I may say generally, that upon my oath, I never had any reason to think that Mr. O'Connor's principles and opinions differed from my own."

After stating that Mr. O'Connor had called at his house in January, Mr. Erskine, being asked whether he had given him any advice, was proceeding to relate the conversation discursively, when the Attorney-General interposed:

"I take it to be clear that the fact may be given in evidence, that you either did or did not advise him to go out of the kingdom, but I apprehend nothing more can be said about it, either as a reason for not detailing the circumstances or in the way of detailing the circumstances, but that the question must be simply that.

"*Mr. Erskine.*—I am obliged to Mr. Attorney-General. I do assure the Court that I might have been in another situation, where those objections would not have been made. I might have been defending Mr. O'Connor as one of his counsel, but I felt my situation as a witness, so I declined that; I shall answer the question; I not only advised Mr. O'Connor, but urged and importuned Mr. O'Connor two or three days before the first day of Hilary term, which commenced the 23rd of January, to leave this country any how."

O'Connor escaped, mainly by the force of character, which subsequent events proved to be much too good for his deserts. It was proved, beyond a doubt, that he had been active in inviting the French to invade Ireland. His principal associate was not so fortunate as himself. The sentence had no sooner been passed, than a scene occurred without precedent in a court of justice. It was close on midnight, and in reply to the significant signals of some injudicious friends who had crowded round, O'Connor leaped from the dock, and made for the door of the court. Ruthven, a police officer, who had previously announced that he had a warrant to apprehend him on another charge, was assaulted, as he swore positively, by Lord Thanet, in a violent effort to retake the fugitive, and a short scene of tumult succeeded which would baffle description. The lights were extinguished—blows freely exchanged—a sword was drawn, and flourished before the venerable judges by an over-active official—all was uproar

and dismay, till, in a few minutes, O'Connor was overpowered and secured. For this disgraceful riot the Attorney-General filed a criminal information against the Earl of Thanet and Mr. Ferguson, a barrister who had been professionally engaged in the trial, as the most active ringleaders. On their trial at bar before Lord Kenyon and the puisne judges of the King's Bench, Erskine flung into the defence his utmost skill and ingenuity — urged with vehemence the gross improbability of the narrative sworn to by the constables, and detected several flagrant contradictions. But it was proved beyond doubt that Lord Thanet had exclaimed in the excitement of the moment, "he thought it only fair that acquitted men should have a run for it;" a sentiment doubtless shared by the majority of his friends, however morally wrong. Some witnesses for the prosecution swore hard to his identity, and by a singularity as great as the cause of the trial, a verdict of guilty was passed upon men who may still be deemed guiltless. The affidavit of the noble earl in vindication of his innocence was permitted by the Court to be filed, in which he says, "I declare upon my word of honour, most solemnly, that I did not concert with any person the rescue of Mr. O'Connor by violence or by connivance, or think of attempting it myself."

There is a curious note appended by Dr. Parr to his copy of the proceedings, which, were not the worthy doctor such a good subject for a hoax, would seem decisive of the question.

"Most unjust, say I! Lord Thanet was completely innocent, yet he was convicted and imprisoned. The real offenders were Gunter Brown, Dennis O'Brien, and Sir Francis Burdett. Sir Francis generously offered to confess. These facts I had from one of the offenders, G. B., a man of courage and veracity. S. P."

Without pinning our faith ever so loosely on the ample sleeve of this credulous scholar, or implicating the characters whom he names, we feel inclined to return a verdict of not proven in the case of the injured earl.*

* The riot was principally attributable to the violence of the police officers and the imprudence of the judges in permitting the warrant to be executed in court.

Mr. Ferguson concludes the observations which he published on his hard case with an elegantly turned panegyric on the conduct of his advocate and friend.

"Of his defence, let those who heard it judge. It is sufficient to say—and more cannot be said—that it equalled any of those former exertions, by which he has for ever shut out all higher praise. With respect to what is personal to myself, the marks of affectionate interest which he has shown towards me through the whole of this affair, deeply as they have impressed themselves upon my mind, have caused there no new sensations; they are such as I have often before had occasion to experience—'*Studium suum curaque de salute meâ multâ me novâ voluptate affecit.*' I have long enjoyed a proportion, perhaps beyond my merits, of his countenance and friendship. It had ever been my study to seek the approbation of a man, whom, for the mild and amiable features of his private character, I esteem and love—whom, for the noble and manly features which mark his public conduct, I admire and venerate—of a man whom the force of genius and eloquence has raised to that height in his profession where he excites no envy (for he can have no enemy when he has no rival), and whose whole life—a life not untried on the slippery stage of politics, nor unexposed to all the temptations and allurements of a corrupt ambition, has been a life of honour, integrity, and independence. His has not been a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out to meet her adversary, but slinks out of the race, where the immortal garland is to be run for, not without dust and heat. During a period of twenty years he has fought every arduous contest in which the rights of his countrymen, and the cause of general liberty, have been involved. So many and splendid have been the triumphs of his eloquence, that they have left him no further honours to attain.

"'Nil jam, Theodore, relictum
Quo virtus, animo crescat, vel splendor honore
Culmen utrumque tenes.'"

CHAPTER II.

LIFE OF LORD ERSKINE CONTINUED.

THE last of the state trials, which Erskine illustrated by his presence as an advocate, was the prosecution of James Hadfield for high treason, in shooting at the king at Drury Lane, on the 26th April, 1800. The trial is of singular and absorbing interest from the crime itself, the mental state of the unhappy prisoner, and the clear, yet subtle, distinction which his counsel then first traced out, with all the acumen of a professor of medical jurisprudence, between the insanity of passion unaccompanied by delusion, and that total derangement of the intellectual faculties, and moral sense, which ought to emancipate their victims from all responsibility to the vengeance of the laws. The subdued and solemn tone in which Erskine discussed this awful and mysterious theme, appears to have been admirably adapted to arrest the attention, and win over the sympathies of reluctant jurors, whose prepossessions were all in arms against the prisoner, and full of horror at his attempt. The narratives of his professional experience, and the curious anecdotes, with which the orator relieves a deep metaphysical discussion, so different from the ardour of his former orations, remind a classical reader of the mild beauties of the Odyssey contrasted with the fire of the Iliad.

His first endeavour was to put the Court and jury in good humour.

"The transaction in every part of it, as it stands recorded in the evidence already before us, places our country, its government, and its inhabitants upon the highest pinnacle of human elevation: —

"It appears that upon the 15th day of May last, his majesty, after a reign of forty years, not merely in sovereign power, but spontaneously in the very hearts of his people,

was openly shot at (or to all appearance shot at) in a public theatre, in the centre of his capital, and amidst the loyal plaudits of his subjects; yet not a hair of the head of the supposed assassin was touched. In this unparalleled scene of calm forbearance, the king himself, though he stood first in personal interest and feeling, as well as in command, was a singular and fortunate example. The least appearance of emotion on the part of that august personage must unavoidably have produced a scene quite different, and far less honourable than that the Court is now witnessing; but his majesty remained unmoved, and the person apparently offending was only secured without injury, or reproach, for the business of this day."

Having thus conciliated his audience, the orator proceeded to unfold his subtle theory: —

"It is agreed by all jurists, and is established by the law of this and every other country, that it is the reason of man, which makes him accountable for his actions, and that the deprivation of reason acquits him of crime. This principle is indisputable; yet so fearfully and wonderfully are we made, so infinitely subtle is the spiritual part of our being, so difficult is it to trace with accuracy the effect of diseased intellect upon human action, that I may appeal to all who hear me, whether there are any causes more difficult, or which, indeed, so often confound the learning of the judges themselves, as when insanity, or the effects and consequences of insanity, become the subjects of legal consideration and judgment.

"Your province to-day will be to decide, whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a morbid delusion, or whether it was the act of a man, who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition. It is true, indeed, that in some, perhaps, in many, cases, the human mind is stormed in its citadel, and laid prostrate under the stroke of frenzy; these unhappy sufferers, however, are not so much considered by physicians as maniacs, as in a state of delirium from fever. There, indeed, all the ideas are overwhelmed, for reason is

not merely disturbed, but driven wholly from her seat. Such unhappy patients are unconscious, therefore, except at short intervals, even of external objects, or at least are wholly incapable of considering their relations. Such persons, and such persons alone (except idiots) are wholly deprived of their understandings, in the attorney-general's seeming sense of that expression. But these cases are not only extremely rare, but can never become the subjects of judicial difficulty. There can be but one judgment concerning them. In other cases reason is not driven from her seat, but distraction sits down upon it along with her, holds her trembling upon it, and frightens her from her propriety. Such patients are victims to delusions of the most alarming description, which so overpower the faculties, and usurp so firmly the power of realities, as not to be dislodged and shaken by the organs of perception and sense: in such cases the images frequently vary, but in the same subjects are generally of the same terrific character."

When he had clearly elucidated his distinction, and saw that it was understood and acquiesced in by his hearers, Erskine proceeded boldly to scrutinise the calm and collected demeanour of the prisoner at the time of the occurrence, and combat the conclusion, at which the Duke of York had arrived from the answers of Hadfield to his interrogatories, that he was morally sane: —

"I conceive, gentlemen, that I am more in the habit of examination than either that illustrious person, or the witnesses from whom you have heard this account, yet I well remember (indeed I never can forget it), that since the noble and learned judge has presided in this Court, I examined for the greater part of a day, in this very place, an unfortunate gentleman, who had indicted a most affectionate brother, together with the keeper of a mad-house at Hoxton, for having imprisoned him as a lunatic, whilst, according to his evidence, he was in his perfect senses. I was unfortunately not instructed in what his lunacy consisted, although my instructions left me no doubt of the fact, but not having the clue, he completely foiled me in every attempt to expose his infirmity. You may believe I left no means unemployed,

which long experience dictated, but without the smallest effect. The day was wasted, and the prosecutor, by the most affecting history of unmerited suffering, appeared to the judge and jury, and to a humane English audience, as the victim of the most wanton and barbarous oppression; at last Dr. Sims came into Court, who had been prevented by business from an earlier attendance, and whose name, by the by, I observe to-day in the list of the witnesses for the crown. From Dr. Sims I soon learned, that the very man whom I had been above an hour examining, and with every possible effort which counsel are so much in the habit of exerting, believed himself to be the Lord and Saviour of mankind, not merely at the time of his confinement, which was alone necessary for my defence, but during the whole time that he had been triumphing over every attempt to surprise him in the concealment of his disease. I then affected to lament the indecency of my ignorant examination, when he expressed his forgiveness, and said with the utmost gravity and emphasis, in the face of the whole Court, 'I am the Christ!' and so the cause ended. Gentlemen, this is not the only instance of the power of concealing this malady. I could consume the day, if I were to enumerate instances; but there is one so extremely remarkable that I cannot help stating it. Being engaged to attend the assizes at Chester upon a question of lunacy, and having been told that there had been a remarkable case tried before Lord Mansfield in this place, I was anxious to procure a report of it, and from that great man himself (who within these walls will ever be reverenced), being then retired in his extreme old age to his seat near London, in my own neighbourhood, I obtained the following account of it:—'A man of the name of Wood,' said Lord Mansfield, 'had indicted Dr. Monro for keeping him as a prisoner (I believe in the same mad-house at Hoxton), when he was sane. He underwent the most severe cross-examination by the defendant's counsel, without exposing his complaint; but Dr. Battye having come upon the bench by me, and having desired me to ask him what was become of the princess whom he had corresponded with in cherry juice, he showed in a moment what he was. He answered that there was no-

thing at all in that, because having been (as every body knew) imprisoned in a high tower, and being debarred the use of ink, he had no other means of correspondence but by writing his letters in cherry juice, and throwing them into the river which surrounded the tower, where the princess received them in a boat. There existed of course no tower — no imprisonment — no writing in cherry juice — no river — no boat — no princess — but the whole was the inveterate phantom of a morbid imagination. 'I immediately,' continued Lord Mansfield, 'directed Mr. Monro to be acquitted; but this man, Wood, being a merchant in Philpot Lane, and having been carried through the city in his way to the madhouse, he indicted Dr. Monro over again for the trespass and imprisonment in London. Knowing that he had lost his cause by speaking of the princess at Westminster (such, said Lord Mansfield, is the extraordinary subtlety and cunning of madmen), when he was cross-examined on the trial in London, as he had successfully been before, in order to expose his madness, all the ingenuity of the bar, and all the authority of the Court, could not make him say a single syllable upon that topic which had put an end to the indictment before, although he still had the same indelible impression upon his mind, as he signified to those who were near him; but conscious that the delusion had occasioned his defeat at Westminster, he obstinately persisted in holding it back.' His evidence at Westminster was then proved against him by the short-hand writer."

Well might the preconceived opinions both of the court and jury be startled by these anecdotes of intense interest, bearing so directly on the fearful question submitted to them; and with eager attention they listened to the narrative, which Erskine then gave, of his client's misfortunes and malady. He told of the poor soldier's wounds on the battle-field, when his head was laid open to the brain, and of the subsequent frightful extravagances to which the discharged veteran was occasionally prone: —

"To proceed to the proofs of his insanity, down to the very period of his supposed guilt, this unfortunate man before you is the father of an infant of eight months; and I have no

doubt whatever, that if the boy had been brought into court (but this is a grave place for the consideration of justice, and not a theatre for stage effect) — I say, I have no doubt whatever, that if this poor infant had been brought into court, you would have seen the father writhing with all the emotions of parental affection; yet, upon the Tuesday preceding the Thursday when he went to the playhouse, you will find his disease still urging him forward, with the impression that the time was come when he must be destroyed for the benefit of mankind; and in the confusion, or rather delirium, of this wild conception, he came to the bed of the mother, who had this infant in her arms, and endeavoured to dash out its brains against the wall."

Erskine then cleared the cases in the books from the gloss which the Attorney-general had cast upon them, and closed a defence, which had been converted in a few hours from despair to triumph, in the following emphatic and solemn manner:

"If you find the act attributable to mischief and malice only, let the man die! . . . . But if he was unconscious of the mischief he was engaged in, the law is a corollary, and he is not guilty. If, when the evidence closes, you think he was conscious, and maliciously meditated the treason he is charged with, it is impossible to conceive a crime more vile and detestable; and I should consider the king's life ill attended to, indeed, if not protected by the full rigour of the laws, which are watchful over the security of the meanest of his subjects. It is a most important consideration, both as regards the prisoner, and the community of which he is a member. Gentlemen, I leave it with you."

The seal of success was stamped upon this appeal and the evidence which supported it so decidedly, that, notwithstanding both the prejudices of the crown lawyers, and the previously fixed opinions of Lord Kenyon, he stopped the case and directed an acquittal.

One of the principles which Erskine questioned, but which was pressed with singular success in the recent trial of M'Naughten, has been calmly investigated and ably enforced by the late Dr. Abercrombie, in his valuable inquiries concerning the Intellectual Powers. "The

principle is, that, when a maniac commits a crime under the influence of an impression which is entirely visionary and purely the hallucination of insanity, he is not the object of punishment; but that, though he may have shown insanity in other things, he is liable to punishment, if the impression under which he acted was true, and the human passion arising out of it was directed to its proper object. Lord Erskine illustrates this principle, by contrasting the case of Hatfield with that of Lord Ferrers. Hatfield had taken a fancy that the end of the world was at hand, and that the death of his Majesty was in some way connected with important events which were about to take place. Lord Ferrers, after showing various indications of insanity, murdered a man against whom he was known to harbour deep-rooted resentment, on account of real transactions, in which that individual had rendered himself obnoxious to him. The former, therefore, is considered as an example of the pure hallucination of insanity; the latter, as one of human passion, founded on real events, and directed to its proper object. Hatfield accordingly was acquitted; but Lord Ferrers was convicted of murder and executed. The contrast between the two cases is sufficiently striking; but it may be questioned whether it will bear all that Lord Erskine has founded upon it. There can be no doubt of the first of his propositions, that a person acting under the pure hallucination of insanity, in regard to impressions which are entirely unfounded, is not the object of punishment. But the converse does not seem to follow; namely, that the man becomes an object of punishment, merely because the impression was founded in fact, and because there was a human passion directed to its proper object. For it is among the characters of insanity, not only to call up impressions which are entirely visionary; but also to distort and exaggerate those which are true, and to carry them to consequences which they do not warrant in the estimation of a sound mind. A person, for instance, who has suffered a loss in business, which does not affect his circumstances in any important degree, may imagine, under the influence of hallucination, that he is a ruined man, and that his family is reduced to beggary. Now, were a wealthy man,

under the influence of such hallucination, to commit an outrage on a person who had defrauded him of a trifling sum, the case would afford the character mentioned by Lord Erskine — human passion founded upon real events, and directed to its proper object; but no one probably would doubt for a moment, that the process was as much the result of insanity, as if the impression had been entirely visionary. In this hypothetical case, indeed, the injury, though real, is slight; but it does not appear that the principle is necessarily affected by the injury being great, or more in relation to the result which it leads to, according to the usual course of human passion. It would appear probable, therefore, that, in deciding a doubtful case, a jury ought to be guided, not merely by the circumstances of the case itself, but by the evidence of insanity in other things."

This test did apply to the case of Hadfield, and justified the verdict even more fully than his counsel's ingenuity, in the then state of public opinion, ventured on pursuing such subtle theories.

The insane criminal, strange to say, survived all who took part in his trial, — judge, counsel, witnesses, to attest, at once, the mercy of our laws, and the amazing skill of his advocate.

Pausing at this eminence to look back upon the triumphs of Erskine's professional career, his biographer can afford to quote, though not without some surprise, the following clever but unjust sketch, which an eminent living barrister has drawn of his forensic exertions:

"To describe Erskine when at the bar, is to ascertain the highest intellectual eminence to which a barrister under the most favourable circumstances may safely aspire. He had no imaginative power, no originality of thought, no great comprehension of intellect, to encumber his progress. Inimitable as pleadings, his corrected speeches supply nothing which, taken apart from their context and the occasion, is worthy of a place in the memory. Their most brilliant passages are but common-place — exquisitely wrought, and curiously adapted to his design. Had his mind been pregnant with greater things, teeming with beautiful imagery, or indued with deep wisdom, he would have been less fitted to shed lustre on the

ordinary feelings and transactions of life. If he had been able to answer Pitt without fainting, or to support Fox without sinking into insignificance, he would not have been the delight of special juries, and the glory of the King's Bench. For that sphere, his powers, his acquisitions, and his temperament were exactly framed. He brought into it indeed accomplishments never displayed there before in equal perfection, glancing wit, rich humour, infinite grace of action, singular felicity of language, and a memory elegantly stored, yet not crowded, with subjects of classical and fanciful illustration. Above his audience, he was not beyond their sight, and he possessed rare faculties of raising them to his own level. In this purpose he was aided by his connexion with a noble family, by a musical voice, and by an eloquent eye, which enticed men to forgive, and even to admire, his natural polish and refined allusions. But his moral qualities tended even more to win them. Who could resist a disposition overflowing with kindness, animal spirits as elastic as those of a schoolboy, and a love of gaiety and pleasure which shone out amidst the most anxious labours? His very weaknesses became instruments of fascination. His egotism, his vanity, his personal frailties, were all genial, and gave him an irresistible claim to sympathy. His warmest colours were drawn, not from the fancy, but the affections. If he touched on the romantic, it was on the little chapter of romance which belongs to the most hurried and feverish life. The unlettered clown, and the assiduous tradesman, understood him when he revived some bright recollections of childhood, or brought back on the heart the enjoyments of old friendships, or touched the chord of domestic love and grace. . . . . In small causes he was never betrayed into exaggeration; but contrived to give an interest to their details, and to conduct them at once with dexterity and grace. His jests told for arguments; his digressions only threw the jury off their guard, that he might strike a decisive blow; his audacity was always wise. His firmness was no less under right direction than his weaknesses. He was in short the most consummate advocate of whom we have any trace; he left his profession higher than he found it, and yet, beyond its pale, he was only an incomparable com-

panion, a lively pamphleteer, and a weak and superficial debater."*

The author is much mistaken if the extracts already given have not sufficiently refuted the above criticism, eloquent though it be. Without running into the extravagance of the dramatist, "None but himself could be his parallel," the admirers of Erskine only echo an universal opinion, that with none of his contemporaries at the English bar can a comparison be instituted in oratory. Among the most precious rarities which a wit of the last century offered to Sir Hans Sloane's museum, were reckoned

> "Some strains of eloquence, which hung
> In ancient times on Tully's tongue;
> But which, conceal'd and lost, had lain
> Till Cowper found them out again."

Substitute the name of Erskine for that of Cowper, and the lines would not be too eulogistic. In the whole range of our national forensic eloquence there is but one name entitled to rank with his—a name as dear in the sister country,—that of Curran. The triumphs of Grattan and Plunkett were more in the senate than the forum; and though Bushe may be aptly described as the Æschines of the Four Courts, too few of his brilliant gems are preserved with which to deck him as a rival. Of distinguished predecessors at the English bar, Murray and Dunning, there are no sufficient specimens left on which to found a parallel. But in the Irish advocate there appears much of congenial excellence, great similarity of temperament; and, as if to finish the coincidence, a singular resemblance in fortune.

They were equally distinguished for fearless independence and high-minded integrity. Almost at the very time that Erskine surrendered his office of Attorney-General to the Prince of Wales, rather than refuse to Paine the benefit of his retainer, Curran was pouring forth a pathetic appeal on the proscription to which his sense of the independence of the bar had exposed him: "I feel that the night of unenlightened

* The London Magazine for March, 1825. The article is attributed to Mr. Serjeant Talfourd.

wretchedness is fast approaching, when a man shall be judged before he is tried—when the advocate shall be libelled for performing his duty to his client, that right of human nature —when the victim shall be hunted down, not because he is criminal, but because he is obnoxious."

When interrupted at midnight in his defence of Bond by the volunteers clashing their arms, as if threatening defiance at his invectives, Curran sternly rebuked their inhuman interruption, and exclaimed "You may assassinate, but shall not intimidate me."

To superciliousness when exerted from the bench neither orator would bow. As the one rebuked Mr. Justice Buller, the other read Lord Clare a terrific lecture, under the artful portait of a predecessor, "that he was violating every sacred duty, and every solemn engagement that bound him to himself, his country, his sovereign, and his God!"

In all the withering flashes of scorn, with which Erskine scathed the band of informers, there is perhaps no figure to be found so striking as that of Curran, when declaiming against the spies brought up after the rebellion from prisons, "those catacombs of living death, where the wretch, that is buried a man, lies till his heart has time to fester and dissolve, and is then dug up an informer!"

Advocates of the people's rights, and champions of prisoners in the most remarkable state trials of their respective countries, they both struggled, night after night, with all the resistless strength of eloquence; the one radiant with triumph and assured of victory; the other pale and stedfast in the energy of despair, certain of the result, but determined that all the decent rites of defence should be observed. In both cases, the populace, enthusiastic in their admiration, took the horses from their carriages, and by a voluntary degradation drew the orators to their homes.

Their sensibility was the talisman of success: each identified himself with the cause of his clients; every look, tone, and gesture impelling the conviction, that, if he were deluding others, he was deceiving himself. In external advantages Erskine far surpassed his rival, whose person wanted both dignity and grace, and whose eye, peculiarly keen and

bright, alone redeemed the other features from insignificance. In voice, too, that powerful instrument of persuasion, Erskine had the advantage, though the tones of Curran are described as singularly soft and plaintive.

Both were consummate masters of pathos. The pleading of Erskine for Lord Bingham is almost exceeded by the thrilling bursts of feeling flung forth by Curran in his speech against Lord Headfort, especially where he reminds the married libertine, that, to legalise his unhallowed wishes, he had two sepulchres to pass. "She is giving to you, at this moment, a pledge of her infidelity, by deserting her husband. You are a married man—she also is married. Ere you can bind her in that sacred union, you have yet two sepulchres to pass! But if you have no pity for the father, have mercy at least upon his innocent and helpless child; do not strike him into that most dreadful of all human conditions the orphanage that springs, not from the grave—that falls not from the hand of Providence or the stroke of death, but comes before its time, anticipated and inflicted by the remorseless cruelty of parental guilt." In each appeal the most complete effect was elicited; the Irish orator raised the amount of damages to 10,000*l.* by his pathetic speech, and his most artful peroration. "The jury saw it was not his fault (it was an Irish jury), they felt compassion for the tenderness of the mother's heart, and for the warmth of the lover's passion. The jury was composed of fathers, brothers, husbands; but they had not the vulgar jealousy that views little things of this sort with rigour; and wishing to assimilate their country in every respect to England, now that they are united to it they, like English gentlemen, returned to their box with a verdict of sixpence damages and sixpence costs."

As the one advocate excelled in judgment, the other rejoiced in a more fertile imagination.

"The riches of Curran's fancy," writes Lord Byron, "are exhaustless: I have heard that man speak more poetry than I have ever seen written." With a mind less poetical, Erskine could summon beautiful images at pleasure, and adorn them with consummate taste. In his polished models of persuasion there is nothing to offend. The best efforts of

the Irish orator sometimes require the apology, that the jurors, whom he harangued, were any thing but fastidious critics, that they abounded in rude sensations, and were ever ready to surrender the verdict to him who offered the most alluring toys. Such instances of miserable trifling as the following could not have sullied the correct taste of the English orator: "My miserable client, when his brain was on fire and every fiend of hell was let loose upon his heart, should then, it seems, have placed himself before his mirror; he should have taught the stream of agony to flow decorously down his forehead. He should have composed his features to harmony, he should have writhed with grace and groaned in melody! But he (the defendant) had shown too marked attentions to the lady. Oh, dreadful messengers of the tea-table! It seems a gentleman at table had the insolence to propose to her a glass of wine, and she—oh, most abandoned lady!—instead of flying like an angry parrot at his head, and besmirching and bescratching him for his insolence, tamely and basely replies 'Port, sir, if you please.'"

Notwithstanding these and some other wretched attempts at pleasantry, Curran bore away the palm in humour. His wit was dispersed prodigally without stint or effort, and has been compared to a lump of virgin gold, crumbling away from its own richness.

In the art of cross-examining a witness the Irish champion is also victor. He was always ready for the ring, and eager to throw down the gauntlet in the lists of raillery and rejoinder. What could be cleverer than his repartee in a horse cause, when he asked the jockey's servant his master's age, and the man retorted with ready gibe, "I never put my hand into his mouth to try." The laugh was against the counsellor till he made the bitter reply: "You did perfectly right, friend; for your master is said to be a great bite."

Erskine displayed similar readiness in a case of breach of warranty. The horse taken on trial had become dead lame, but the witness to prove it said that he had a cataract in his eye. A singular proof of lameness! suggested the Court. "It is cause and effect," remarked Erskine, "for what is a cataract but a fall?"

It must be confessed that he was sometimes baffled and disconcerted, though our countrymen across the channel will not allow as much for their idol. Having to discuss the merits of a sporting dog, he was reminded by a witness that he must be confounding a pointer with a setter. "Ay, very likely," said Erskine, with a flush of vexation; "it is a very idle diversion, and I am proud to say that I know nothing about it."

He would occasionally escape from a dilemma by a pun. In some question about drawing, Stothard, the artist, had stoutly denied his doctrine of triangles: Erskine exclaimed adroitly, "I see I can catch nothing by angling here," and sat down.

In his practice in the Crown Court, as counsel for the prosecution, Curran set an example which Erskine would have done well — restraining his Nisi Prius fervour — to imitate. When taken special to Cork, to prosecute Sir Henry Hayes, for the abduction of Miss Pike, a Quaker lady of considerable fortune, the Irish Counsellor thus clearly defined the landmarks of his duty: "It is the obligation of those who have to defend a client on a trial for his life to exert every force, and to call forth every resource that zeal, and genius, and sagacity can suggest; it is an indulgence in favour of life; it has the sanction of usage; it has the permission of humanity; and the man who should linger one single step behind the most advanced limit of that privilege, and should fail to exert every talent that Heaven had given him in that defence, would be guilty of a mean desertion of his duty, and an abandonment of his client. Far different is the situation of him who is concerned for the Crown. Cautiously should he use his privilege, scrupulously should he keep within the duties of accusation. His task is to lay fairly the nature of the case before the Court and the jury. Should he endeavour to gain a verdict otherwise than by evidence, he were unworthy of speaking in a court of justice."

Towards the conclusion of his speech, Curran could truly say, "It has been my most anxious wish to abstain as far as was consistent with my duty, from even the remotest expression of contumely or disrespect to the unhappy prisoner at

the bar, or to say or to do any thing that might unhinge his mind or distract his recollection, so as to disable him from giving his whole undisturbed reflection to the consideration of his defence; but it is also a sacred duty, which every man placed in my situation owes to public justice, to take care, under the affectation of false humanity, not to grant impunity to guilt."

The forbearance of Curran deserves the highest praise, from its contrast to the vehemence and passion which then too frequently inflamed our English Courts of criminal judicature. On the trial of the Birmingham rioters, the leading counsel who opened the case against them, after asking the jury, "if they did not punish, what would all Europe say?" and affirming that if they did not convict, they were enemies of their country, said, "Look at those fellows, — what a pretty exchange it would be if a hundred such fellows were let alone, and Dr. Priestley thrown into the fire! If you do not convict on this occasion, and there should be another riot, himself will be burnt!" When the counsel for the prisoners, afterwards objected to some vituperative epithet directed against them, the Judge (Baron Perryn) said, "I think the counsel has opened it very properly."

As the *vivida vis animi* is supposed to pervade and colour too brightly the proceedings of Irish Courts of Justice, the calm reserve and passionless deportment of Curran merit our unqualified approbation, and may be compared, greatly to the disadvantage of the leader of the English bar, with Erkine's vituperative vehemence, as counsel for the prosecution at Lewes.

After a long and successful practice, both advocates were tempted, in an unlucky hour for their fame and fortunes, to risk their reputation, by migrating to courts where they were comparatively unknowing and unknown; Curran being appointed Master of the Rolls in Ireland, within a few months of Erskine's acceptance of the seals. They had been fixed too many years — the one in the Four Courts, the other in Westminster Hall—to become familiar with the rules or even principles of equity, and (as was said of Flood) could not bear to be transplanted at fifty. As party-leaders, however,

they would deem themselves bound in honour to attempt the giddy height, and could not shrink from a station, even though contrary to their wishes and feelings, to which they were, for the credit of their friends in Parliament, committed.

"When the party," Curran wrote, "with which I had acted so fairly, had after so long a proscription come at last to their natural place, I did not expect to have been stuck into a window — a spectator of the procession."

This state of comparative neglect and inefficiency seems to have increased the natural cynicism of the Irish Master of the Rolls, and to have tinged with a feeling of acerbity the social meetings of Erskine and himself. On one of these occasions, subsequent to Mr. Grattan's *début* in the Imperial Parliament, the conversation after dinner turned on the very splendid display of the Irish orator. Lord Erskine, as Curran imagined, exhibited a rather uncalled-for fastidiousness, and of Mr. Grattan's fame he was almost as jealous as of his own.* "Come, come," said his Lordship, "confess at once, Curran, was not Grattan a little intimidated at the idea of a first appearance before a British Parliament?" The comparison galled Curran to the quick; he denied that he was afraid, or had any reason. "Well, but Curran, did he not confess he was afraid? no matter what might be the groundlessness of his apprehensions, did you not hear him say so? Come," continued Lord Erskine, a little pertinaciously. "Indeed, my good Lord, I never did; Mr. Grattan is a very modest man; he never speaks of himself;" was the sarcastic and silencing rejoinder.

Into the political labyrinths, through which Erskine wound his ambitious way to the woolsack, it is proposed now to follow him. Fond of politics, though averse to the House of Commons, he effected, in 1797, a pleasant compromise between his predilections and fears, by writing a phamplet, whose extraordinary success has been already noticed in his letters, entitled, "A View of the Causes and Consequences of the present War with France." There is in the British Museum a copy of the thirty-third edition, addressed in the

* Phillipps's Recollections of Curran.

hand-writing of the author, "A Monsieur, Monsieur Talleyrand." It was written "to save the country rushing down the precipice of ruin in the frenzy of alarm," and contains several forcible passages. For example:

"If Ireland were conducted as she ought to be, what dependence, in God's name, could we have to place upon the winds? Could a protective government of three millions of men, happy under the enjoyment of our free constitution, have occasion to look to a weather-glass for its safety against twenty thousand men? But it is said the Irish people flocked with loyalty to the standard of their country; for that very reason it should be crowned with the garland of constitutional freedom."

The writer concludes with a gloomy prediction of the inefficacy of his labours:

"I am perfectly aware that every thing I have written will be ineffectual for the present; the cloud that hangs over us is as yet too thick to be penetrated by a light so feeble. It is much easier to scourge vice than to dissipate error."

The war lingered four years longer, when Pitt resigned rather than yield to the necessities of an ignominious peace; and his successor, desirous of a truce, and anxious to strengthen his government, offered Erskine the post of Attorney-General. This failure of a negotiation he had much at heart, — and no candidate could have brought higher qualifications of nature, and art, and skill, — is thus explained by Mr. Moore, in his "Life of Sheridan:"

"During the administration of Addington, Erskine, led by the example of Lord Moira, Sheridan, Tierney, and others of the friends with whom he had usually acted, manifested a willingness to support the new minister, and was even on the point of accepting the office of Attorney-General. Overtures to that effect having been transmitted to him by Mr. Addington, he thought it his duty to lay them before the Prince of Wales, whose service, in case of an acceptance of the office, it would be necessary for him to relinquish. In his answer, conveyed through Mr. Sheridan, the Prince, while he expressed the most friendly feelings towards Erskine, declined at the same time giving any opinion as to either his accept-

ance or refusal of the office of Attorney-General, if offered to him under the present circumstances. His Royal Highness also added the expression of his sincere regret, that a proposal of this nature should have been submitted to his consideration by one, of whose attachment and fidelity to himself he was well convinced, but who ought to have felt, from the line of conduct adopted and persevered in by His Royal Highness, that he was the very last person who should have been applied to, for either his opinion or concurrence respecting the political conduct or connections of any public character, especially of one so intimately connected with him, and belonging to his family. Upon this expression of the Prince's sentiments the offer was of course declined."

During the short truce which followed the inglorious treaty of Amiens, Erskine took advantage of the lawyer's holiday, the long vacation, and made an excursion to Paris. It was his second visit to the gay capital, which he had first seen in the heyday of youth. "Erskine," writes Romilly, in September, 1790, "is just returned from Paris, a violent democrat. He has had a coat made of the uniform of the Jacobins, with buttons bearing this inscription, '*vivre libre ou mourir*,' and he says he intends to wear it in the House of Commons." The lapse of twelve years had tended to subdue the bounding exuberance of republican fervour; and in September, 1802, the sober and reformed democrat accompanied Fox to the levee, in the hope of a flattering reception; he was always fond of the *digito monstrarier hic est*, and experienced a mortification, which Mr. Trotter, an eye-witness, has thus amusingly recorded:

"Buonaparte at the levee made a long flurried address to Fox, to which the modest statesman made no reply. Erskine's presentation followed. I am tempted to think that he felt some disappointment at not being recognised by the First Consul; there was some difficulty at first, as Erskine was understood to speak little French. Monsieur Talleyrand's impatient whisper to me I fancy I yet hear — *Parle il François?* Mr. Merry (the English consul), already fatigued with his presentations, and dreading a host to come, imperfectly designated Erskine, when the killing question followed, *Etes-*

vous légiste? This was pronounced by Buonaparte with great indifference, or, at least, without any marked attention." A page of foolish comment follows: — "The municipal laws of one nation do not concern or interest another. A lawyer from Vienna or Petersburg, however eminent at home, would be unnoticed at the British court."

Nous avons changé tout cela, as all who witnessed the splendid reception of Monsieur Dupin, and other eminent foreign jurists must allow. It would appear from the *Souvenirs* of Mr. Berryer, the venerable French advocate, that Erskine was received by the bar of Paris in a manner more worthy of his fame. In giving a report of his own flattering reception by the English lawyers at Westminster, he thus accounts for it: — "One morning I repaired to the Court of King's Bench, accompanied by a solicitor, with no other intention than that of being present as a looker on at one of its sittings. The Attorney-General perceives my white head, the only one in the crowd; he sends an officer of the Court, bearing *a wand of ivory,* to speak to me. The officer presses through the crowd, reaches the place where I am standing, and in a few words of English, translated by my solicitor, invites me to follow him to the bar of the amphitheatre, set apart for the advocates. The bar opens. Two young advocates, in wigs *à la* Louis Quatorze, come forward to introduce me. All the advocates — the Broughams and Scarletts being of the number — rise to salute me. I was dressed in a plain black surtout. My two young attendants assign me a seat between them. They keep me during the sitting *au courant* of what is going on. It was a bankruptcy matter under an inquiry by a jury. The jury having retired to deliberate, I took a respectful leave of the advocates *en masse.*

"All the London newspapers of the day following gave a report highly flattering to both countries, on this solemn reception of a Parisian advocate. I have since ascertained that it was by way of return for my having, twenty years before, procured the famous Erskine a reception equally warm from all my brethren at one of the sittings of the Appeal Court at Paris."

The *ésprit de corps* which procured for Erskine this just

and flattering homage had, of course, no influence with a military anti-Anglican court. It was not the policy of the First Consul to conciliate too much a detested nation, or honour with especial notice any other than the one leader of opposition. At a second levee we are assured the Consul was not more observant of the great lawyer than at the first.

By a more fortunate exercise of prudence, Curran escaped the slight and chagrin attending it. Writing to a friend from Paris at this period, he thus expressed his misgivings — "I don't suppose I shall get myself presented to the Consul; not having been privately baptized at St. James's would be a difficulty, to get over it a favour, and then the trouble of getting oneself costumed for the show, and then the small value of being driven, like the beasts of the field before Adam, when he named them. I think I shan't mind it." He was true to his word, and thus evaded what might have been to one of his sensitive temperament an infliction. With his insignificant face and figure what chance could he have had, when the nobleman-look and mien of Erskine failed to attract attention?

This did not constitute the last of Erskine's annoyances. "At a sumptuous dinner," says Trotter*, "given by Madame Cabarras, *ci-devant* Tallien, to Fox, Erskine, and other distinguished foreigners, to the surprise and displeasure of some, Arthur O'Connor was a guest. Erskine was extremely uneasy, remembering how much he had been deceived in his testimony at Maidstone, and afraid lest evil report should misrepresent this matter in England; but Fox treated it as unavoidable, though unlucky. He spoke to O'Connor as usual."

On his escape from Paris back to the business (or rather in his case, pleasures) of term, Erskine lived in a perpetual incense of admiration, and scattered it with equal alacrity upon others. Though disappointed in his own little scheme of vanity, he would not retaliate on a friend. Macintosh had just made his splendid oration in defence of Peltier, and was greeted with the following note of admiration the same evening:

* Memoirs of Fox.

" Dear Macintosh,

" I cannot shake off from my nerves the effect of your most powerful and wonderful speech, which so completely disqualifies you for Trinidad or India. I could not help saying to myself as you were speaking, O terram illam beatam, quæ hunc versum acceperit, hanc ingratam, si ejecerit, miseram, si amiserit. I perfectly approve of the verdict, but the manner, in which you opposed it, I shall always consider as one of the most splendid monuments of genius, learning, and eloquence.

" Monday evening. Yours ever,

" T. E."

He could well afford to bestow eulogy, standing on a height unpproachable as an advocate, but the opportunity is not always seconded by inclination, and Erskine deserves especial mention for the generous praise which he was always foremost to lavish on his meritorious, but less fortunate, brothers at the bar. He was rewarded even in a selfish sense, for their gratulations and good opinion buoyed him up on the surface of success.

His judgment on purely legal cases was rarely solicited; he was the lawyer of the court rather than the chamber; but on the renewal of hostilities with France, he was consulted on an interesting question, on behalf of the volunteers then arming themselves in every quarter of the kingdom, and he published in consequence a very long, elaborate, and ornate opinion (contrary to that of the law officers of the crown) to the effect that volunteers were free to quit the service at any time. His reasonings on the nature and extent of the engagement of volunteers are highly characteristic:

" If the term volunteer is supposed to be satisfied by the original spontaneousness of the enrolment, leaving him afterwards indefinitely bound, then every enlisted soldier must be equally considered to be a volunteer, and with the difference of receiving money and the local extent of service excepted, would be upon an equal footing both as to merit and independence. Such a doctrine appears to me to be equally unjust and impolitic; unjust, because for the volunteer's engagement there is no consideration but the sense of honour and duty, the reward of which is sullied if the service does not continue

to be voluntary; impolitic, because it is overlooking a source of action infinitely greater than the force of any human authority — to take no account of that invincible sensibility in the mind of man for the opinion of his fellow-creatures."

A single specimen of his ingenious arguments in banc may be selected from one of his latest and most mature efforts, for the amusement and edification of those who cannot pursue the subtle lawyer into the recesses of the reports. His client had been nonsuited in an action for pirating the words of a song called "Abraham Newland," published in a single sheet of paper; Lord Ellenborough being of opinion at the trial that such a publication was not protected by the statute 8 Anne, c. 19., as the word *book* not only means in common acceptation a plurality of sheets, but is decidedly used in this sense in one clause of the statute itself. The plaintiff was therefore called, and the point reserved for the opinion of the Court. Erskine for the plaintiff moved next term for a rule to show cause why the nonsuit should not be set aside. He contended that "the legislature could never have meant to make the operation of the statute depend upon the style in which any composition is printed, or the form in which it is bound up. This song might easily have been extended over several sheets, and rendered a duodecimo volume. In Back v. Longman, Cowper, 623., it was decided that music is within the act; and musical compositions most generally appear in this fugitive form. [Lord Ellenborough. In the case cited the musical composition was a sonata, and a sonata may be a book.] It never occurred to the Lord Chancellor who directed the issue, or to Lord Mansfield or any of the judges who decided the case, that the form of the publication could make any difference, and therefore it is not stated. If a different construction were put upon the act, many productions of the greatest genius, both in prose and verse, would be excluded from its benefits. But might the papers of the Spectator, or Gray's Elegy in a Country Church-yard, have been pirated as soon as they were published, because they were first given to the world on single sheets? The voluminous extent of a production cannot, in an enlightened country, be the sole title to the guardianship the author receives from the law.

Every man knows that the mathematical and astronomical calculations which will inclose the student during a long life in his cabinet, are frequently reduced to the compass of a few lines; and is all this profoundity of mental abstraction, on which the security and happiness of the species in every part of the globe depend, to be excluded from the protection of British jurisprudence? But there is nothing in the word *book* to require that it shall consist of several sheets bound in leather, or stitched in a marble cover. Book is evidently the Saxon boc; and the latter term is from the *beech-tree*, the rind of which supplied the place of paper to our German ancestors. The Latin word liber is of a similar etymology, meaning originally only the bark of a tree. Book may therefore be applied to any writing, and it has often been so used in the English language. Sometimes the most humble and familiar illustration is the most fortunate. The Horn Book, so formidable to infant years, consists of one small page, protected by an animal preparation, and in this state it has universally received the appellation of a book. So, in legal proceedings, the copy of the pleadings after issue joined, whether it be long or short, is called the paper book, or the demurrer book. In the Court of Exchequer a roll was anciently denominated a book, and so continues in some instances to this day. An oath as old as the time of Edward I. runs in this form: "And you shall deliver into the Court of Exchequer a book fairly written," &c. But the book delivered into court in fulfilment of this oath, has always been a roll of parchment."

This ingenious argument, of which a few short heads only are presented, failed to convince the Court. The words of acts of Parliament were too stubborn to bend even to his skilful interpretation. He could better persuade juries than those ermined sages of the law, to the summit of which he was now on the point of ascending.

The talents of ministers being found insufficient for the emergency, Fox listened to the overtures of the Wyndham-Grenvillites, as the War party were designated, and hastily answered Sheridan and Erskine, when they expostulated against his intentions, "I can bear any thing but fools." A

paper of remonstrance, drawn up by Erskine, was presented to Fox by the Duke of Norfolk, urging that the present administration, on the score of innovations on the country, had given the Whigs no pretence for complaint whatever; and, as to their alleged incapacity, it remained to be proved that they were capable of committing errors, and producing miscarriages equal to those which had marked the course of their predecessors, whom the measure he favoured seemed expressly calculated to replace in power. Mr. Fox's reply was, that he would never take any political step against the wishes and advice of the majority of his old friends. Such is the substance of a document found in Sheridan's handwriting, intended apparently for publication in the newspapers.*

The succeeding ministry was soon broken up by the death of Pitt; but at the moment Erskine had little inclination to speculate on the change that startling event might make on his fortunes. He had lost, only a month previously (in December, 1805), the fond and faithful wife, whom he had married very young, and who had shared both his straitened and prosperous fortunes for a space of nearly thirty years. On a tablet to her memory, erected by Bacon in Hampstead church, he commemorates her devoted affection, and his own vivid grief.

In a few weeks the mourner was summoned from his seclusion, to take an active part in the change of the cabinet; and in February, 1806, kissed hands as Baron Erskine and Lord Chancellor. It had been the king's wish that Sir Arthur Piggott should have held the vacant seals. He is said to have exclaimed, when the choice of the premier was announced to him, "Well, well, remember he is your chancellor, not mine!" The reluctance thus manifested, so far as it respects the legal fitness, proves his majesty's discernment.

But for precedent, and his station in the profession, Erskine would have done wisely to decline taking into his hands what Roger North calls "the pestiferous lump of metal." The Chief Justice of the Common Pleas, Sir James Mansfield, had previously refused the seals on the plea of age, and Lord

Ellenborough declared that he could not afford the risk, he had too large a family. It was scarcely possible for Erskine without losing caste to put aside the tempting bauble; and yet he might have acted more wisely and prudently, as a common lawyer, had he resisted the temptation. When William the Third proposed to make Lord Holt chancellor, the worthy common law judge respectfully declined the proposal: "May it please your majesty, I never was but in one equity suit in my life, and that I lost." Erskine had not even the benefit of this experience. All his acquaintance with that court consisted in the popular notion of its delay. On Lord Kenyon once observing that the parties should apply to Chancery for relief, the witty advocate rejoined, in a tone of mock pathos, "Would your Lordship send a dog you loved there?" Just previously to his promotion a case was laid before him, which he found to involve a question of equity, and he declined to give an opinion upon it, further than that it should be sent to some gentleman conversant with that branch of practice; the case was accordingly taken to Mr. Hart. It forms a strong token of his quickness of apprehension and acumen, that the new Chancellor should, at such short notice, be competent to pronounce decisions, all confirmed upon appeal, and entitle himself to the negative praise of Lord Eldon, "that common lawyers have made *almost* as good judges as any that had sat in equity."

Lord Erskine's first speech as Chancellor was to defend Lord Ellenborough's seat in the cabinet: "Not to call into his Majesty's cabinet or councils a nobleman whose knowledge of the law of the land, and of the constitution of the country, was, in every degree, fully admitted, would be an absurd infringement of his majesty's prerogative. The motion should have his decided negative, for he would never lightly consent to alter any part of the established constitution of this country!" The ministry of "The Talents" might, however, boast of a greater triumph in the division than in the debate.

Assisted in looking up cases by Hargrave, whose simple-minded vanity he gratified with a patent of precedence, he delivered judgments (collected in the 13th volume of Vesey)

which are considered with respect, though necessarily wanting the research of equity lawyers, mature in knowledge from long practice in their courts.

Soon after his elevation to the woolsack, the new Chancellor was seen with a book under his arm, which he laughingly pointed out to his friend, and declared emphatically that "he was then studying Cruise," a digest of real property-law of the elementary kind. Yet such appears to have been his caution, and the soundness of his conclusions, that only one of his decrees was appealed against upon a branch of Mr. Thelluson's will, and that one was affirmed.

An impertinent wager having been hazarded on the subject, the proposer, who might have crossed the Atlantic, wrote with cool assurance to Lord Erskine, to know from his own lips how far the charge was true. His reply, contradicting the calumny, appears to have been dashed off with all the ex-Chancellor's characteristic vivacity, and, together with its amusing postscript, well repays perusal.

"Upper Berkeley Street, Nov. 13. 1819.

"Sir,

"Your letter was sent to me from Sussex yesterday. I certainly was appointed Chancellor under the administration under which Mr. Fox was Secretary of State in 1806, and could have been Chancellor under no administration in which he had not had a part; nor would have accepted, without him, any office whatsoever. I believe that administration was said by all the *blockheads* to be made up of all the *talent* in the country.

"But you have certainly lost your bet on the subject of my decrees. None of which, but one, was appealed against, except one upon a branch of Mr. Thelluson's will, but *it was affirmed* without a dissentient voice on the motion of Lord Eldon, then and now Lord Chancellor. If you think I was no lawyer, you may continue to think so. It is plain you are no lawyer yourself; but I wish every man to retain his opinions, though at the cost of three dozen of port.

"Your humble servant,

"Erskine.

"To save you from spending your money upon bets you are sure to lose, remember that no man can be a great advocate who is no lawyer. The thing is impossible."

Several of these judgments possess intrinsic value, and general interest. The case of Welles v. Middleton, cited from MS., 13 Vesey, p. 52, established, that relief would be granted against a deed of gift by a client to his attorney. The evidence was, that Wilcox, the ancestor, possessed sufficient understanding to make the deed; that he made it knowing the contents; that it was deliberately read over to him, attested by respectable witnesses, and that he frequently afterwards recognized and admitted it. The defendants (his attornies) had not done any thing immoral or dishonest, but the principle of that decision was the policy of the law, founded upon the safety and convenience of mankind; a shield against advantage taken by persons in situations of confidence, preventing acts of bounty which in other situations might have effect. The deed being taken, while the character of client to the attorney remained, could not be permitted to stand, without striking at the root of the principle.

The authority of his old friend Dr. Parr was overruled by the chancellor on a singular occasion; White *v.* Wilson, 13 Ves. 87. A bill had been filed by devisees under the will of Lord Chedworth, dated in 1804, to have the will established, and the trusts carried into execution. An issue *devisavit vel non* was desired by the heirs at law, suggesting incompetency in the testator. Upon the trial of that issue in the King's Bench, a verdict was found establishing the will to the full satisfaction of Lord Ellenborough, upon very clear and strong evidence of capacity in the conduct of the testator, particularly as a magistrate acting as chairman at the quarter sessions; and in the House of Lords, opposed only by some circumstances of eccentricity and singularity in dress, which came out upon cross-examination, the heir at law examining only one witness. A motion was made by the heir for a new trial upon a suggestion of the expectation of further evidence, and an affidavit by Dr. Parr, expressing his opinion, that the testator had not been of a perfectly sound mind from a propensity to insanity, perhaps from his birth, and promoted by certain circumstances of his life. On the other side, several letters from Dr. Parr to the testator were produced, consulting his lordship upon subjects of literature, expressing

in strong terms an opinion of his good sense and talents, and, in one instance, recommending a clergyman for a living in his lordship's gift; the offer of which Dr. Parr declined for himself.

The motion was refused with costs, the Chancellor remarking, that the rule upon the subject of lunacy had been distincty stated by Lord Thurlow, that, where insanity has not been imputed by relations, or friends, or even by common fame, the proof of insanity, which does not appear to have ever existed, is thrown upon the other side, which is not to be made out by rambling through the whole life of the party, but must be applied to the particular date of the transaction. A deviation from that rule would produce great uncertainty.

"In such a case as this, therefore, it must be shown that a man exercising all these great public duties, which, it was proved, this testator did exercise, had nevertheless a morbid image in his mind, upon a particular subject, so wide from sound understanding and clear reason, the distinction of a sound mind, that he ought not to be considered in that state. In my experience I know only one instance of a verdict of lunacy under such circumstances, which is the case of Mr. Greenwood, who was bred to the bar, and, as Lord Chedworth did, acted as chairman at the quarter sessions, but, becoming diseased, and receiving in a fever a draught from the hand of his brother, the delirium taking its ground then, connected itself with that idea, and he considered his brother as having given him a potion with a view to destroy him. He recovered in all other respects, but that morbid image never departed, and that idea appeared connected with the will, by which he disinherited his brother. Nevertheless it was considered so necessary to have some precise rule, that, though a verdict had been obtained in the Court of Common Pleas against the will, the judge strongly advised the jury to find the other way, and they did accordingly find in favour of the will. Further proceedings took place afterwards, and ended in a compromise. But is this a case of that sort? Dr. Parr does not represent that he was near the testator about the time he made his will, but carries him back to the time he was at school at Harrow."

A curious case came before Lord Erskine, Lowther v. Lord Lowther*, respecting the alleged sale of a valuable picture, which had been deposited by Lord Lowther, executor of Lord Lonsdale, with one Bryan, a dealer in pictures, and claimed to be retained by him, as purchaser, at a very low price. On cleaning the picture, the subject of which was Mars and Venus, it was considered a valuable original, and an offer was made that Bryan should allow for it the value of three hundred guineas in pictures, and (as the gentleman who made the bargain affirmed) account for whatever more the picture might produce. The picture was afterwards pronounced to be a Titian, worth five thousand pounds. Bryan insisted it was an absolute sale, but offered one hundred guineas more, and, afterwards, an additional four hundred guineas. Lord Lowther had wished to exchange it, on account of the subject; and Bryan refusing to put a price on the picture, his friend set the price of three hundred guineas upon it. This was before the painting had undergone that process by which its pristine beauty was restored. "I cannot," said the Chancellor, "upon this evidence alone, attribute fraud to Bryan." An issue was directed to ascertain whether there was a sale, or the possession was that of agent and trustee for sale, who, therefore, could not purchase without full communication.

The case of Vowles v. Young† forms a valuable decision to the effect that, in questions of pedigree, hearsay evidence of declarations by the husband as to his wife's legitimacy may be received, as well as of those of relations by blood. Upon a matter of pedigree, proof of the forgery of a document is not decisive, however much it must weigh against the party producing it.

"Two cases," said the Chancellor, "have occurred in the House of Lords. In the Douglas case every branch of the written evidence, that went to establish the descent of Lady Jane Douglas, was known to be manufactured by Sir John Stuart, who, having neglected to secure evidence of birth, had recourse to those feigned letters, as they were called, in support of his son's legitimacy; and that was considered, both by Lord Mansfield and Lord Camden, as not throwing any

* 13 Vesey, 95. † 13 Vesey, 140.

obstacle in the way. In the more recent case of Lord Anglesea, there was the certificate of the marriage, and the hand of the clergyman was proved. Lord Anglesea lived with the lady, and upon his death-bed, receiving the sacrament, as well as at other times, declared he was so married: and Lord Valentia was the legitimate son of that marriage. When that case was before the House of Lords a similar suspicion of forgery arose as in this instance: the eye could detect that, but not, as in this instance, a forgery of a whole entry interpolated. The clergyman's hand being established in that case, the suspicion fell only upon the signature of one of the two witnesses. Lord Mansfield said, 'Truth does not require the aid of forgery: if the marriage was real, they might have come forward with the evidence belonging to it,' and judgment was given against Lord Valentia. These two great cases stand in opposition to each other. In the former an instance was cited by Lord Mansfield of a lady who, being accused of the murder of her sister, desired time, and procured another to personate her; but that being discovered, the person accused was executed, and afterwards her sister appeared. The conclusion is, that it cannot be said, as a forgery appears, the fact is not to be established, swear it who will; as Lord Mansfield said in the latter of these two cases in the House of Lords. A rule is not to be laid down either way, but every case must depend upon its own circumstances. Forgery is always an object of suspicion; but the effect is not such that it may not be overborne by testimony."

In vindication of the insulted laws, and to preserve the purity of the Bench from suspicion, the Chancellor committed to the Fleet Prison, for a contempt, the committee of a lunatic, his wife, and printer*, as the authors and printer of a pamphlet, with an address to the Lord Chancellor, by way of dedication, reflecting upon the conduct of the petitioner and others acting in the management of the affairs of the lunatic.

"This is not a constructive contempt. In the dedication the object is avowed, by defaming the proceedings of the Court, standing upon its rules and orders, and interesting the public, prejudiced in favour of the author by her own repre-

* Exparte Jones, Vesey, vol. xiii p. 237.

sentation, to procure a different species of judgment from that which would be administered in the ordinary course, to taint the source of justice."

This instant chastisement of a design to tamper with the honour of the Court elicited general commendation.

In all the feelings that become a judge — in personal carriage and demeanour, in the graceful discharge of the political duties of the Chancellor — Lord Erskine left nothing to desire. A nobleman by nature's patent, he brought to the exercise of his high office, beyond the threshold of Lincoln's Inn Hall, all the qualities that could embellish and adorn it. He presided with the applause of his brother peers at the impeachment of Lord Melville; and had the felicity to give the royal assent to the legislative emancipation of the slave-trade.

As Lord Chancellor he showed himself no respecter of persons; and, by his blended courtesy and firmness, made an impeachment once more respected. When Mr. Tierney, one of the managers for the Commons, was called as a witness, and offered to give evidence from his place in the gallery, which had been set apart for the Commons' use, the Lord Chancellor interposed: "I think there ought to be no difference between one witness and another, as to the place in which he is to be examined. It is the privilege of the Lords to say where a witness is to be placed upon his examination." Upon Mr. Tierney attempting to remonstrate, the Chancellor said gravely, "I apprehend we can hear no argument from a member of the House of Commons; and that if the gentleman is to be examined, he must stand in the proper place for witnesses." Mr. Tierney, with evident reluctance, was of course compelled to succumb, but prefaced his answer to the few questions submitted to him, with a resolute explanation and protest.

"My Lords, before I answer that question, I presume I may be permitted to clear myself from what may otherwise appear to be a want of respect to your Lordships; there was nothing more remote from my intention than to show any other than the most complete deference to the order and proceedings of this Court; neither have I any personal motive for presuming to protest as to the place in which I

am examined. I felt that the courtesy of every court in the kingdom would have allowed me to be examined in any place in which I might be sitting when called as a witness, and being in that place as one of the Commons, not an indifferent spectator, but here in a committee of the whole House, to make good the charges against Lord Melville, I did feel that I should be wanting in that respect which was due to them, did I not endeavour to maintain my right and privilege of being examined in my place, in which as a member of the House of Commons I attended."

The privilege here asserted by Mr. Tierney appears to be consistent with the general parliamentary usage, although an instance to the contrary occurred on the trial of Warren Hastings.*

As the point of etiquette might be either acquiesced in or refused at discretion, Lord Erskine proved his independence in declining to bow the head to the supremacy of the Commons, never more arrogant than when appearing in their vindictive character as the grand inquest of the nation. His demeanour to the counsel, and prompt adjudication of points of evidence in dispute, were equally creditable to him as gentleman and judge. After Mr. Plumer had addressed his brother peers for some hours in defence of Lord Melville, the Chancellor, from an anxiety to oblige, addressed the weary counsel:

"If you seek for a resting-place in a course so complicated and extensive as this, you may freely choose it for yourself. This Court, which ought to be an example to all other courts, will ever hold in the highest reverence the indulgent character of British justice. I am persuaded, without calling for the formal consent of their Lordships, that, if you find it more consistent with the duty which you owe to your client, or more comfortable to yourself, you may rest here, and proceed to-morrow morning in your defence."

Mr. Plumer of course gratefully accepted the indulgence. But if the counsel ventured on making frivolous objections, they were at once disposed of in the following summary fashion:

* See Mr. Hatsell's note on this subject, 4 Precedents, 2d and 3d ed. of 1818.

"The only ground upon which the order could be received as evidence was, that Lord Melville admitted it in his letter, and it will no more signify than the colour of their clothes, upon what ground the Lords of the Treasury did this act."

By this happy junction of firmness and urbanity, Lord Erskine put an end to those wearisome disputations and unseemly delays, which had obscured the trial of Warren Hastings, and restored the proceedings by impeachment to their former "state and circumstance" in the public estimation.

With characteristic good-nature he displaced none of the officers of his court, but treated Lord Eldon's staff as his own personal friends. "Gentlemen, you will be good enough to retain your places," was his courteous, *insouciant* salutation. With old acquaintance he would have his joke in the midst of all the cares of state. A canny Scot, who had known him in Edinburgh days, having strolled below the bar to catch a peep of the Chancellor, was soon surprised by an usher bringing him a card, on which was sketched a little turtle, with the hospitable invitation written under, "Ready at seven. — Come. — Erskine."

Both bar and suitors shared in his flowing courtesy; and it was not without a feeling of regret, and some participation in his pain, that they rose to meet his parting bow, in April, 1807. He had only thirteen months' tenure of office, and was just beginning to be familiar with its duties, when he received a peremptory notice to quit.

The report in Romilly's Diary is flavoured with his habitual bitterness, but gives an amusing glimpse behind the scenes: —

"March 19. 1807. The Chancellor gave Piggott and me a long account of a very curious conversation he had yesterday with the king. This, though communicated very confidentially, he afterwards repeated to almost all his friends, and sometimes in large companies at dinner, I should rather say an account of a long speech he made to the king. When he went in to his majesty and had told him that the recorder's report was to be made, he says, that though it is contrary to all court etiquette to speak on any subject which the king has not first mentioned, he proceeded somewhat to this effect: 'He said,

that he was about to do what he believed was very much out of order, but he hoped that his majesty would excuse it, in consideration of the very extraordinary conjuncture in which the country was placed; that he was sensible that when he first entered into his majesty's service, his majesty had entertained a prejudice against him; that he was quite satisfied that that prejudice was now entirely removed, and that his majesty did him the justice to believe that he had served him faithfully; that upon the measures which had been the occasion of the present state of things (meaning the Catholic Bill, as it has not been very properly called), he thought, both religiously and morally, exactly as his majesty himself did; that, however, after what had passed, it appeared to him that the ministers, though they had signed the minute of council, could not possibly, with any consistency of character, retract it; and that to give a pledge not to offer advice to his majesty upon measures which the state of public affairs might render necessary, would be, if not an impeachable offence, yet at least that which constitutionally could not be justified. He then said that he thought it his indispensable duty to represent to his majesty the situation in which he stood; that he was on the brink of a precipice; that nothing could be more fatal than to persevere in the resolution which the king had formed, of dismissing his ministers; that the day on which that resolution was announced in Ireland, would be a day of jubilee to the Catholics; that they could desire nothing more than to have a ministry who were supported by all the talents and weight of property in the country, go out upon such a measure; that he ventured to tell his majesty that, if he proceeded with his resolution, he would never know another hour of comfort or tranquillity.' The king, he says, listened to all this without once interrupting him; that he could observe, however, by his countenance that he was greatly agitated; and when the Chancellor had concluded, the king said to him, 'You are a very honest man, my Lord, and I am very much obliged to you.' The Chancellor thinks that he has made a great impression, and half flatters himself that the king will retract his resolution. The fact, however is, that his majesty saw Lord Howick after the Chancellor, and per-

severes most firmly in his determination of forming a new administration."

The bitterness of his mortified feelings was betrayed in the House of Lords on a slight provocation, which, at any other period, would scarcely have moved his spleen. A few weeks after his resignation, he was eagerly advocating the extension of trial by jury to civil causes in Scotland, as the source of all the blessings of liberty in this country, and, observing the Duke of Cumberland smile at the panegyric, the ex-Chancellor animadverted with warmth on this trifling discourtesy.

"He must be bold to tell him such a smile was inconsistent with the decorum with which the House was in the habit of hearing every noble lord express his sentiments; but it was particularly indecorous and indiscreet in that illustrious personage to smile at a panegyric on the trial by jury. Trial by jury was the means of placing the present family upon the throne of England, and trial by jury had preserved our most gracious sovereign, that illustrious person's father, through his long and glorious reign. Trial by jury was the best security for the freedom of that House; and he should never cease to feel and know that trial by jury enabled him to address their lordships upon equal terms with the highest man among them."

In the discussion which ensued upon the change of ministry, the ex-Chancellor made no secret of avowing his own repugnance to the measure of Roman Catholic emancipation, — a repugnance which must have heightened the pangs of his unceremonious expulsion from office. Glancing at the secret manœuvres which had accelerated his fall, he vindicated his attachment to the principles of the Establishment, and proved that, from him at least, the Church could be in no danger:

"In political life there are wheels within wheels, as many almost as in a silk mill: the smallest and apparently the most insignificant are sometimes, from their situations, the most operative; and some of them are sunk so deep in the dirt that it is very difficult to find their places, though one can very easily discover their tracks and their effects.

"No man can be more deeply impressed than I am with

reverence for God and religion, and for all the ministers and professors of the Christian Protestant faith. Would to God that my life could be as pure as my faith! I consider the era of the Reformation, and its irresistible progress in the age which has succeeded it, as the grand epoch in which the Divine Providence began to fulfil most visibly the sacred and encouraging promises of the Gospel. I look forward, my Lords, — believe me, I always have — with an anxiety which I cannot express, but with a hope which is unextinguishable, to the time when all the nations of the earth shall be collected under its shadow, and united in the enjoyment of its blessings. It is that feeling, my Lords — mixed, perhaps, with what may be considered as the prejudices of education, but which I cannot consider myself to be prejudices — that has kept me back from going the full length of Catholic expectation. I consider the Roman Catholic faith as a gross superstition, not chargeable upon the present generation, which contains thousands after thousands of sincere and enlightened persons, but the result of the darkness of former ages, and which is fast giving way under the hourly increasing lights of religious and philosophical truth: not that vain and contemptible jargon, which has usurped the name of philosophy; but the philosophy of nature, which lifts up the mind to the contemplation of the Almighty, by approaching to him nearer, and discovering his attributes in the majesty and harmony of his works."

An intimate friend, Mr. Adair, has given us a fuller insight into Lord Erskine's views and feelings at this period.

"I was induced upon one occasion to request his interposition in a question likely to be agitated in the House of Lords, considering that his opinion would receive considerable authority from his high official station. I was then at a distance from England, where the murmur of British politics could not reach me, not calculating upon the probability that the Whigs would, in the mean time, have knocked their heads against the Catholic subject, and that before my application could reach him they would all have been out of office. A little soreness, I think, is perceptible in his answer, and it shows also how the mind, under the vexations of disappointed

ambition, welcomes to herself the delusive anticipations of ease, and comfort, and tranquillity, in the enjoyments of moral retirement."

"Dear ——,

"I am afraid you will think me unkind in not writing to you in answer to your friendly letter, but I do assure you, that I remember you with true regard, and take the strongest interest in your welfare: the truth is, that we had gone out of office before I received the papers respecting ——, and I have no reason to believe any thing upon the subject is in agitation. If ever the matter is taken up, my regard for your opinions and wishes, as well as the justice of the case, (as far as I am yet acquainted with it,) would induce me to do what little may now be in my power upon the matter you refer to. I am now retired, (most probably for life,) and am living what for me may be considered an idle, but I hope not an useless, life, as I keep up my reading, in case the chances of this changeable world should give me the opportunity of turning it to public account.

"Should I, however, remain long out of a public station, I shall find healthful and interesting occupation in the cultivation of the grateful earth, who, if well cultivated, is less capricious in the distribution of her favours, than courts or princes.

"I frequently see our friend ——, who never fails to express great regard for you, and if it shall happen that I can practically manifest my own, I shall be well pleased, I do assure you, to convince you that I am

"Your very faithful and sincere servant,

"ERSKINE."

The natural disappointment so visible in this letter tinged for a time the conversation and manners of the writer, though his temperament was too joyous and kindly to be long dimmed by its influence. "I never," says the late James Smith, "saw him apparently vexed, except at a fête champêtre given by Richard Wilson at Fulham. I there walked with him round the grounds, when he spoke very peevishly about Lord Grenville, and the recently shattered Whig administration, exclaiming several times — 'A rope of sand.'"

Stung by what he considered ungenerous treatment, and true to his political friendships, he took for some years a more

lively interest than his wont in the discussions of the House of Lords, and joined the leaders of the Whig party, Lords Grey and Holland, in denouncing measures, the prudence of which was generally justified by the event, and in uttering predictions, gloomy as those of Cassandra, but with the marked difference, that, though disbelieved, they were invariably untrue. In this spirit of sinister prophecy he foretold, as the result of our continental policy, that we should sink into the gulf of ruin, and no one would say, "God bless us." Distrusting the faint beam of hope, which then first dawned upon his country's efforts in the peninsula, he declared that, but for the immortal renown of men, who had died for their country, it would have been better for them — certainly much better for their country — to have shot them upon the parade of St. James's Park, than to have sent them, not to suffer the noble risk of soldiers, and in a practicable cause, but to endure insufferable, ignoble, and useless misery in a march to the centre of Spain. At the very time that he felt and expressed exultation at being a countryman of Moore, of Baird, and of Hope, he reiterated this fixed opinion, as if fearful that the pointed saying might be forgotten,

His vehement reprehension of that strong measure — which political necessity alone could justify — the seizure of the Danish fleet, was happily illustrated by familiar instances of the injustice that would be done, were such a system of high-handed violence extended to private life. In a style of humour, not unworthy of Windham, he declared that were we to attempt to keep the Danish fleet, we should act like a man, who, from the apprehension of being attacked by thieves on the road, should for his defence seize a fowling-piece from a neighbour, who was too weak to resist him, and afterwards point the identical weapon to its master's breast, and go out sporting with it for a whole season! * . . . If a fire were to break out in the Haymarket, it would be justifiable to pull down an adjoining house to check the spreading of the flames, but a man would be by no means justified in pulling down his neighbour's house at Hyde Park Corner.

By an illustration equally quaint and forcible, he pointed

* Parliamentary Debates, vols. x. and xi.

out the injustice of the Orders in Council. "Is it not adding insult to injury to say to America that her shipping is not compelled to come into our ports, since they may return back again? Let us suppose that his Majesty had been advised, while I was a practiser at the bar, to issue a proclamation that no barrister should go into Westminster Hall, without passing through a particular gate, at which a toll was to be levied on him. Should I have been told gravely that I was by no means compelled by such a proclamation to pass through it? Should I have been told that I might go back again to my chambers with my briefs, and sleep there in my empty bag if I liked?"

At a measure far more unjustifiable, and which we may hope, for the credit of a magnanimous people, our rulers will never be tempted to repeat, the bill to prevent the exportation of Jesuits' bark to France, the generous spirit of Erskine revolted, and his indignant oratory, the inspiration of heroic feeling, is said to have rivalled his best forensic efforts, and to have taught the peers what the heaven-born advocate (to vary a phrase of Lord Chatham's) must have been in earlier days.

"Ministers were, like Howard, to visit all Europe: like him they were to plunge into the infection of hospitals; but not like him, to remember the forsaken and forgotten, but to pluck the balm of health, or rather of life, out of the mouths of the miserable. They were to rob them not of one medicine, which might be substituted for another, but of one which could not be supplied, and the depriving them of which would subject Great Britain to the final, everlasting curse, 'I was sick and ye visited me not.'"

His protest on the passing of this savage statute forms one of the best reasoned and most impressive documents in the Lords' Journals, ample as are the records there embodied of senatorial wisdom. This active sense of humanity was not confined in Erskine's bosom to his fellow-creatures. He came forward to teach the legislature the rights of tame and reclaimed animals to their protection, and in the following letter to Sir Charles Bunbury, showed how much his heart had been enlisted in the cause.

" My dear Sir Charles,

" So many accidents have happened to poor animals in the House of Commons, that I mean to give notice that immediately after the judges' return from their circuits, I shall bring in a bill into the House of Lords to prevent cruelty to certain reclaimed animals. Of course the bill can only be to declare it a misdemeanor, and then, as in the case of the Slave Trade, I shall bring in a bill into the House of Lords in the first instance. I trust to Wilberforce and yourself, both of whom I consider to be pledged to the business, to add the various penal clauses, which are in fact the most material part, and send it back to me. I shall get the judges pledged to the principle in the first place.

Yours most faithfully,

" March 4th, 1808. " ERSKINE."

Having well weighed and matured the clauses of his comprehensive and novel text, he recommended it to the Lords in a speech of singular eloquence:

" I am now to propose to the humane consideration of the House a subject which has long occupied my attention, and which I own to your lordships is very near my heart. I am to ask your lordships, in the name of that God who gave to man his dominion over the lower world, to acknowledge and recognise that dominion to be a moral trust."

He read with emphasis the preamble:

" Whereas it has pleased Almighty God to subdue to the dominion, use, and comfort of man, the strength and faculties of many useful animals, and to provide others for his food, and whereas the abuse of that dominion by cruel and oppressive treatment of such animals is not only highly unjust and immoral, but most pernicious in its example, having an evident tendency to harden the heart against the natural feelings of humanity, be it therefore enacted."

He thus admirably refuted the sophisms of apologists for cruelty: —

" As to the tendency of barbarous sports of any kind or description whatsoever to nourish the natural characteristics of manliness and courage, the only shadow of argument I ever heard upon such occasions, all I can say is, that from the mercenary battles of the lowest of beasts (human boxers)

up to those of the highest and noblest that are tormented by man for his degrading pastime, I enter this public protest against it. I never knew a man remarkable for heroic bravery, whose very aspect was not lighted up by gentleness and humanity, nor a kill-him and eat-him countenance, that did not cover the heart of a bully or a poltroon."

In glowing terms he foretold an improved tone of humanity as the result of his enactment.

"The moral sense of the parent re-animated or rather in this branch created by the law, the next generation will feel in the first dawn of their ideas the august relation they stand in to the lower world, and the trust which their station in the universe imposes on them, and it will not be left for a future Sterne to remind us, when we put aside a harmless insect, that the world is large enough for both. This extension of benevolence to objects beneath us, become habitual by a sense of duty inculcated by law, will reflect back upon our sympathies to one another, so that I may venture to say firmly to your lordships, that the bill I propose to you, if it shall receive the sanction of Parliament, will not only be an honour to the country, but an era in the history of the world.

"During the thirty years of my public life I never introduced any alteration in the law, or any new act of parliament. I profess no ostentation in coupling a statute with my own name, and on the present occasion your lordships will, I trust, give me credit for being actuated by the purest motives."

Though his noble-minded appeal was received with loud cheers by a House, which contained the unusual number of seventy Peers, his unlucky vaunt that the attending to the feelings of the animal itself, and preventing cruelty from a consideration of its suffering, might be considered as an era in history, could scarcely fail to provoke jealous animadversion. Lord Ellenborough growled forth his strong objections to making a new era in legislation upon this point; and the Chancellor could not help slyly asking, "Why as the ox was mentioned, the bull was not included?" A Bill against bull-baiting had been thrown out in the Commons some sessions previously by the mischievous, yet whimsical, pleasantry of Windham, who, when this enlarged measure came down

from the House of Lords, opposed the going into committee upon it in a speech steeped with raillery against both the author and his scheme: —

"We ought to take care to be cautious at least how we begin new eras of legislation, and ought to have a reasonable distrust of the founders of eras, lest they should be a little led away by an object of such splendid ambition, and be thinking more of themselves than of the credit of the laws, or the interest of the community. To do that which no one ever yet has thought of doing, to be the first who has stood up as the champion of the rights of brutes, is as marked a distinction as a man can well aspire to.

"The measure sets out with a preamble, containing a lofty maxim of morality, or theology, too grand to be correct — too sublime to be seen distinctly, and most ludicrously disproportioned to the enactments that follow; wherein it is declared, that God has subdued various classes of animals to the use and benefit of man; and from thence it seems to be inferred, not very consequentially, that we ought to treat them with humanity."

In his peculiar vein of humour he cited a book called "The Art of ingeniously Tormenting," the concluding chapter of which is entitled "General Rules how to torment all your Acquaintance." This bill, he said, should be entitled "A Bill for harassing and oppressing certain Classes among the Lower Orders of his Majesty's Subjects." He sneered at "the diligent canvass that had been made in fashionable circles, the hypocrisy of exaggerated sensibility, and the exclusion of animals not tamed or reclaimed from protection. It is said they are feræ naturæ — a learned distinction, but never before surely so whimsically applied — and therefore not entitled to the protection of man. One danger is, they would become so numerous as to overrun the earth. But this danger does not apply to a great class with which, notwithstanding, we make pretty free, namely, the fishes.* What a pretty figure," continued the witty orator, "must we make in the world, if

* "He was met by the old answer that we kill them to prevent them overrunning the earth, and then he said in passing, and as it were parenthetically, 'An indifferent reason, by the way; for destroying fish.'"—*Lord Brougham's Statesmen.*

in one column of the newspapers we should read a string of instances of men committed under the Cruelty Bill, and in another an article of Sporting Intelligence of the most glorious day's sport ever remembered: that of fifty horsemen, who were out at the beginning, not above five were in at the death; that three horses died in the field, and several, it was thought, would never recover."

Windham concluded with denouncing the scheme as a wild and frantic act of hypocrisy. His jests and merriment won over the country gentlemen almost to a man, and though a majority of thirteen voted for the committee, on a subsequent evening the question, that the bill should be committed that day three months, was carried by 37 against 27.

In the next session Erskine's bill was again brought into the House of Lords with some alterations, but was subsequently withdrawn by the noble framer. He survived to see his humane wishes embodied in the Statute Book, the singular but kind-hearted member for Galway taking charge of the measure. This act will embalm his memory, and the eccentricities of a worthy man be forgotten under the sobriquet of Humanity Martin.

But the disgust occasioned by the sneering reception given to his merciful endeavours — the hopelessness of success — the drowsy sans-souciance of thinly scattered benches — scarcely nodding acquiescence, alienated the lover of popularity from their communion, and for a long interval his voice ceased to light up with merriment the tapestried chamber of the House of Lords. With the exception of a few feverish months, Erskine became a mere man about town, lively and reckless to the last — exiled for the remaining seventeen years of his life from the active duties of his profession, and left to float a splendid waif upon society. The stirring advocate who had magnanimously rejected all invitations to parties during the sitting of the court, and rose every morning at five o'clock, found, though still in vigorous manhood, no refuge from ennui but in society, and might have lain in bed till the afternoon, had he chosen to adopt the excuse of the poet Thompson, "Why should I get up, when I have nothing to do?"

This enforced absence of occupation forms the best apology

that can be offered for the frailties which disfigured his latter days. Brooding over his former intense importance, and present titled insignificance, with no active pursuit to concentrate his energies, no national cause to quicken his ambition, he drifted down the stream of fashionable life, a gay and welcome idler, but far from happy. "Idleness of mind," says Burton in his Anatomy of Melancholy, "is the nurse of naughtiness, the step-mother of discipline, the cushion upon which the devil reposes, and a great cause of melancholy." That the change must have been irksome in the extreme to one of Erskine's active character, who can doubt? He loved to linger round the scenes of former happiness, to return 'where his strength lay — where he had garnered up his heart,' to visit the courts, and take a passing glance at Westminster Hall. One morning, in the beginning of Trinity Term, he was seen to saunter into the robing room, and jumping on the table exclaimed laughingly to the busy lawyers, "Well, here am I again, the first day of Term, and not a single brief in my bag."

He continued a frequent guest at the table of the Prince Regent, who used familiarly to call him *Tom*, and with characteristic propriety made him Knight of the Thistle, a salvo to his wounded pride, nor among Scotland's peers did any wear the green ribbon with more grace.

He tried to dissipate the weariness of leisure with agricultural pursuits and the occupations of farming. Colman and some brother wits dining with him at Hampstead, the ex-chancellor observed, with all the pride of a landlord, that he had then about 3000 head of sheep. "I perceive," interrupted Colman, "your lordship has still an eye to the woolsack!"

He took up the pursuit too late in life ever to become thoroughly fond of, or familiarly conversant with, agriculture. Lord Leicester tells a story of Erskine riding with him through one of his farms. Coming to a finely-cultivated piece of wheat, the first specimen he had seen of drill husbandry, Erskine exclaimed in a delighted tone, "What a beautiful piece of lavender." Sir J. Sinclair affirmed that Erskine knew nothing of agriculture; once he said to him,

"I have studied Coke at Westminster, and am now studying Coke at Holkham, as great a man in his way."

He loved to preside at the Bencher's Table at Lincoln's Inn, and, in the acquiescence of the hour, adopted an obnoxious by-law excluding all who wrote for the newspapers from the society at Lincoln's Inn. By a singular inconsistency this illiberal proposition had Clifford (of O. P. notoriety) for its author, and Erskine for its foster parent, two genuine, unadulterated Whigs.

Laying the stone of some charitable institution, taking the chair at a masonic festival, feeding the merriment of the Beef Steak Club, swelling the chorus of a theatrical fund — these were blended with other more intellectual dissipations. The friend of Macintosh, De Stael, and Byron, he delighted in communing with the literary coteries of the day.

Lady Morgan, though dissatisfied at first sight, appears to have been enchanted with his conversational talents. "I was a little disappointed," she writes, "to find that Erskine spoke like other persons; was a thin, middle-aged gentleman, and wore a brown wig. He was always delightful, always amusing, frequently incoherent, and I thought sometimes affectedly wild, at least paradoxical."

In Lord Byron's Diary is contained a curious account of his conversation, wishes, and pursuits. The entries are made in the spring of 1814. "On Tuesday dined with Rogers, Madame de Stael, Macintosh, Sheridan, Erskine, Payne Knight, and others. Sheridan told a very good story of himself and Madame Recamier's handkerchief. Erskine a few stories of himself only. . . . . Lord Erskine called, and gave his favourite pamphlet, with a marginal note and corrections in his handwriting. Sent it to be bound superbly, and shall treasure it. — March 14th. Lord Erskine called today. He means to carry out his productions on the war, or rather wars, to the present day. I trust that he will. — Must send to Mr. Murray to get the binding of my copy of his pamphlet finished, as Lord Erskine has promised me to correct it, and add some marginal notes to it. Any thing in his handwriting will be a treasure, which will gather compound

interest from years. Lord Erskine thinks the ministers must be in peril of going out. So much the better for him."

His intimacy with Lord Byron, and the idol worship paid to the author of "Childe Harold," may have been one of the chief causes, which led Erskine to dissipate the abundance of his leisure by the composition of a prose romance. Following the tract first pointed out by Swift in his voyage to Laputa, he published a political allegory in the guise of a stranger's visit to Swaloal (London was designated in a similar work of fiction in Queen Anne's reign, under the title of Troynovant), and surprised the circles of literature and fashion by the announcement of "Armata," a fragment, with the apt motto, ἑτυμοισιν ὁμοια.

The name was not affixed to the title-page of the first edition; but Lord Erskine, in a note to Colman and others, announced that he was the author, and canvassed for approbation.

"Dear sir,

"As men of real genius are always the most indulgent critics, I send you my little romance without fear. The two parts are very different. The first was intended to be a kind of bolus to swallow my old politics in, which were too long passed to be a political pamphlet; and having gone out of this our world without going to that from whose bourne no traveller returns, I was obliged to come back again to town, describing it, however, as if in the world I had just left. I should like to know whether you think my remarks upon the stage are correct.

"Yours most faithfully,

"44. Upper Berkeley Street. "ERSKINE."

But the story was without interest, and the satire not keenly pointed for readers fascinated with the spells of Scott and Byron; and, after a short period of exclamation and disappointment, the work, though pronounced by Dr. Parr to be most valuable (the Doctor had a modicum of praise for every presentation copy), dropped, and was forgotten. The author is angry with the dress worn in the island, and proposes a sort of sumptuary law in regard to professional costume.

"I only know my acquaintance as shepherds know their sheep, by the variety of their faces, notwithstanding the simi-

larity of their fleeces. I saw no cloth worn but of two colours only, though their fabrics are beautifully various; and indeed the whole male population of Armata seemed to be beaten black and blue by that champion of abuses, custom."

His humour appears rather strained, and his rhetoric more turgid than sublime, *e. g.*

"The summer at Swaloal had gone over to the winter months; and when Phœbus appeared in the spring, he appeared, as I was told, with a P. P. C. upon his disk..... We entered a magnificent hall, but which, instead of being lighted up, was in such a state of darkness that we could scarcely discern one another. I was on the point of inquiring the cause of this, when in a second, and without a hand being stretched forth, I found myself in the centre of a transcendent blaze of lights, brighter than if all the whales in the South Seas and Greenland had been melted down into oil, and set fire to at my feet. I am almost afraid to express the similitude it suggested, and the sensation it produced, though it cannot surely be profane to feel the power of the Creator in 'the inventive faculties of his creatures;' it exalted my mind to contemplate the astonishing effect of the Divine word upon the universe throughout its boundless extent, when God said, 'Let there be light, and there was light.'"

The author's views are set off by several shrewd satirical remarks, and sublimed in parts by the healthy spirit of religious feeling. He is severe upon the abuses of the poor laws, upon imprisonment for debt, and the confusion of our statute-book.

"England," says Morven, the philosopher of the work, "would never have permitted her houses of charity, if a mistaken policy had erected them, to be converted into the haunts of vagabonds to knot and gender in; England would not have set up courts throughout the whole country to play at football with the unhappy.'... 'Turn,' I said, 'to your law for preventing infection from the plague.' 'Here it is,' said the Armatan counsellor, as he read the title; but he had not proceeded ten lines in the enacting part, when he found it principally related to the smuggling of chew-chum, a leaf resembling our tobacco. 'Oh,' said he, on my laughing at

the discordancy, 'this is a mere mistake, depend upon it — some misprinting; — let me turn to another.' 'Well then,' I said, 'find me the law which regulates your marriages;' which he turned up accordingly in a moment, and read its title with an air of triumph; but had not read far, when he found it mostly related to horned cattle."

Assuming a graver air, the author rebukes the frivolity of the age, and declares his own reliance on the sublime truth of revelation: —

"I sincerely honour the Church of England, and hold by her doctrines as the purest and the best. Absurd enthusiastic ardour ought to be exposed and discountenanced, because it brings religion into contempt; but it consists with my own knowledge, that many persons in England, of the purest lives, and of the most exalted religion and virtue, have been reproached, or sneered at as Methodists, only for maintaining and believing the very same doctrine which our Saviour preached when upon earth."

Lord Erskine then follows up Dr. Hutton's ingenious theory to prove the distance of the fixed stars from the earth, and calculates that

"It would take us, moving in a most expeditious carriage, at ten miles an hour, about ninety-one millions of years to reach the nearest of the fixed stars. Nothing can be more interesting than the contemplation of boundless space. When I reflect that God has given to inferior animals no instincts nor faculties that are not immediately subservient to the ends and purposes of their being, I cannot but conclude that the reason and faculties of man were bestowed upon the same principle, and are connected with his superior nature. When I find him, therefore, endowed with powers to carry, as it were, the line and rule to the most distant worlds, I consider it as conclusive evidence of a future and more exalted destination; because I cannot believe that the Creator of the universe would depart from all the analogies of the lower creation in the formation of his highest creature, by gifting him with a capacity, not only utterly useless, but destructive of his contentment and happiness, if his existence were to terminate in the grave."

Before we quit this singular work, it may not be uninteresting to notice, as a trait of character, the suggestion which Lord Erskine propounds gravely, that judges and superior officers should continue to wear their dresses in going to and returning from the courts.

"If the robes of justice do not inspire the multitude with an additional respect for the magistrates, why are they worn at all? and if they have that effect, why should the illusion be so abruptly overthrown by exhibiting to the populace the very same men, looking, perhaps, from careless habits, more meanly than thousands, who had but a moment before beheld them with salutary awe. This cannot be politic. I could not help smiling to myself at the ludicrous idea of all Palace Yard in an uproar at the astonishing sight of our judges coming out of Westminster Hall in such shabby frocks and brown scratches, as would infallibly subject them to be rejected as bail in their own courts even for 10*l.*, though they were to swear themselves black in the face."

Far from adopting this notion, a distinguished brother reformer, the Rev. Sydney Smith, would rush into the opposite extreme, and discard the wig and gown from our courts of justice. "The Americans," he says, "are the first persons who have discarded the tailor in the administration of justice, and his auxiliary, the barber: two persons of endless importance in the codes and laws of Europe. A judge administers justice without a colorific wig and particoloured gown, in a coat and pantaloons. We have doubts whether one atom of useful influence is added to men in important situations by any colour, quantity, or configuration of cloth and hair."

I venture to differ humbly, but decidedly, from both theorists, and think that as much respect is preserved by the adoption of one uniform habit in court as would be lost by the spectacle of the long robe in our streets.

The literary pursuits of Erskine were agreeably relieved at this period by the grateful task of commenting on a collected edition of the speeches of his friend and political leader, the revered Charles James Fox. His letter to Mr. Wright, the editor, is couched in a tone of elegance and manly feeling.

"The expression of my regret that the utmost care and attention could give but a very faint representation of their merits is, however, no preface to my wishing they should be suppressed. Far from it. It would be an absurd objection to a bust of Demosthenes or Cicero, that the vigour of the eye was lost in the marble, and the lips cold and silent which were the sources of his fame. It would be as strange a criticism on a cabinet of natural history, that rare animals, however ingeniously preserved, were but feeble representations of them when living; that, though we observed the form of a lion, we could not hear him roar, nor see him stalking over the desert in the tremendous majesty of his dominion; or that, though we could not but admire the form and plumage of an eagle, we should account it nothing, because his vast wings were not in motion, nor his prey flying dismayed under their shadow."

The following pathetic tribute to the power and goodness of Fox confers equal honour on the eulogist and the subject of his eulogy: —

"Eloquence, which consists more in the dexterous structure of periods, and in the powers of harmony of delivery, than in the extraordinary vigour of the understanding, may be compared to a human body, not so much surpassing the dimensions of ordinary nature as remarkable for the symmetry and beauty of its parts. If the short-hand writer, like the statuary or painter, has made no memorial of such an orator, little is left to distinguish him, but in the most imperfect reliques of Fox's speeches the bones of a giant are to be discovered.

"I cannot but look back, as to the happiest and most honourable circumstance of my life, that I thought and acted with Mr. Fox, through so considerable a part of his time, and that now in my retirement from the world (for so I have considered it since my professional course has been closed for ever), I have had the opportunity of thus publicly expressing my veneration for his memory. When I followed him to the grave, I was unable from sorrow to support with decent firmness the high place which my station at that period assigned

me in the funeral procession, and even now, when thus engaged in the review of his splendid and illustrious career, I cannot but feel the most affectionate and painful regret, seeking a kind of consolation with his numerous friends, from his being in a manner still living in the representative of his family."

That representative has in turn passed away, and the warm heart which poured forth its sympathies is also cold in death; but though time thins yearly the circle of fond friends who cherish the memories of both, their histories can never become strange to Englishmen, nor by any generation will Fox or Erskine be forgotten.

CHAPTER III.

THE LIFE OF LORD ERSKINE CONCLUDED.

In these elegant literary pursuits the ex-Chancellor contrived to solace his vacant hours—and would that all the dissipations, with which he sought to chase away ennui, had been equally tasteful and serene! His beautiful residence on the very summit of Hampstead Hill, above Caen Wood, was admirably adapted to every want, whether of literature or society. The extension, improvement, and decoration of such a spot, which commands a splendid prospect, had been the amusement of very many years, and, though attended with considerable expense, had rendered it a delightful retirement. To this villa, shut out from the road between Hampstead and Highgate by evergreens of different descriptions, Lord Erskine gave the somewhat fantastic name of Evergreen Hall. Within an easy half-hour's drive from the west end of London, its host made it for a season the common centre, to which the brightest rays of Whig notables, both literary and fashionable, might converge. Of one of these festive gatherings Sir Samuel Romilly has given a lively description, in which the indiscretion of Lord Erskine, and his humane, yet eccentric, diversions, are set faithfully before us. He seems to have embraced in his comprehensive fondness for animals the most ungainly and least attaching objects of creation:*

"I dined to-day at Lord Erskine's. It was what might be called a great opposition dinner: the party consisted of the Duke of Norfolk, Lord Grenville, Lord Grey, Lord Holland, Lord Ellenborough, Lord Lauderdale, Lord Henry Petty, Thomas Grenville, Tierney, Piggott, Adam, Edward Morris (Lord Erskine's son-in-law), and myself. This was the whole company, with the addition of one person; but

* Romilly's Memoirs.

that one the man most unfit to be invited to such a party that could have been found, if the man had been anxiously looked for. It was no other than Mr. Pinckney, the American minister: this at a time when the opposition are accused of favouring America to the injury of their own country, and when Erskine himself is charged with being particularly devoted to the Americans! These are topics which are every day insisted on with the utmost malevolence in all the ministerial newspapers, and particularly in Cobbett. If, however, the most malignant enemies of Erskine had been present, they would have admitted that nothing could be more innocent than the conversation which passed. Politics were hardly mentioned, and Mr. Pinckney's presence evidently imposed a restraint upon every body. Among the light and trifling topics of conversation after dinner, it may be worth while to mention one, as it strongly characterises Lord Erskine. He has always expressed and felt a great sympathy for animals. He has talked for years of a bill he was to bring into parliament to prevent cruelty towards them. He has always had several favourite animals, to whom he has been much attached, and of whom all his acquaintance have a number of anecdotes to relate—a favourite dog, which he used to bring when he was at the bar to all his consultations: another favourite dog, which, at the time when he was Lord Chancellor, he himself rescued in the street from some boys, who were about to kill it under pretence of its being mad; a favourite goose, which followed him wherever he walked about his grounds*; a favourite mackaw, and other dumb favourites without number. He told us now that he had got two favourite leeches. He had been blooded by them last autumn, when he had been taken dangerously ill at Portsmouth. They had saved his life, and he had brought them with him to town: had ever since kept them in a glass; had himself every day given them fresh water; and had formed a friendship with them. He said he was sure they both knew him, and were grateful to him. He had given

* Coleridge mentions that he sometimes took this goose an airing with him in his carriage.—*Table Talk.*

them different names—Home and Cline, (the names of two celebrated surgeons,) their dispositions being quite different. After a good deal of conversation about them, he went himself, brought them out of his library, and placed them in their glass upon the table. It is impossible, however, without the vivacity, the tones, the details, and the gestures of Lord Erskine, to give an adequate idea of this singular scene."

When compelled to abandon the delightful retreat at Hampstead, and withdraw for retrenchment to a small mansion on his estate in Sussex, the humane lawyer found in his favourites fresh objects for solicitude, and new sources of amusement. Acting on the principle of the true citizen of the world, who would not harm the most troublesome fly, as there was room enough for both, he wished to extend protection to all created beings, and patronised even a rookery, that peculiar object of agricultural aversion. To enforce his views, he wrote a little poem in the style of Dryden's Fables, but with far inferior power; and, though he would not publish the easy verse in which he inculcated his sound philosophy, he gave copies to his friends. The following short preface and introductory lines fully explain the design of this little fable in octo-syllabic measure, intituled:

"THE FARMER'S VISION.

"The following lines were occasioned by my having at the instance of my bailiff in Sussex complained to a neighbour of his rookery, the only one in that part of the country: but having been afterwards convinced of the utility of rooks, I countermanded my complaint, and wrote 'The Farmer's Vision.'

"The lines are very incorrect and unfinished, being sketched only as a domestic amusement, to inspire humane and moral feelings in a new generation of my family, and with that view were inscribed to my eldest grand-daughter, Frances Erskine, as the fair poetess of St. Leonard's Forest, who, though not then sixteen years of age, could have handled the subject much better herself. It is indeed so capable of being made interesting, that I would have pro-

longed the vision, and worked it up into a poem, but for an insuperable objection, viz., that I am not a poet! It is not fit for publication; a few copies are only printed for friends who asked for them, as it was too long to make them in writing.

"BUCHAN HILL, SUSSEX, *December* 25. 1818.

" Old Esop taught vain man to look
In nature's much neglected book,
To birds and beasts by giving speech
For lessons out of common reach;
And though 'tis said they speak no more,
(Once only too in days of yore,)
They whisper truths in reason's ear,
If human pride would stoop to hear—
Nay, often in loud clamours crave
The rights, which bounteous nature gave:
A flock of rooks, my story goes,
Of all our birds the most verbose,
Took their black flight to Buchan Hill,
On Willard's* oats to eat their fill:
His gun he fired, when off they flew,
With scatter'd rear of not a few,
Fainting from many a cruel wound,
And dropping lifeless on the ground.
But one, bold rising on the wing
Thus seem'd to speak—Rooks never sing—
' Before the Lord of this domain
Sure justice should not plead in vain;
How can his vengeance thus be hurl'd
Against his favourite lower world.
A sentence he must blush to see,
Without a summons or a plea;
E'en in his proudest, highest times
He ne'er had cognizance of crimes†;
And shall he now with such blind fury,
In flat contempt of judge and jury,

* Lord Erskine's bailiff.

† The Lord Chancellor has no criminal jurisdiction.

Foul murder sanction in broad day,
Not on the King's but God's highway!'
Touch'd with the sharp but just appeal,
Well turn'd at least to make *me* feel,
Instant this solemn oath I took—
No hand shall rise against a rook!
Scarce had the solemn pledge been given,
When, signal of approving heaven,
A form angelic seemed to fly
On meteor wing athwart the sky."

The doctrine of humanity to every thing indued with life, however low in the scale of creation, is enforced by the angel at great length, but in strains very unlike the seraphs in Milton. The kind-hearted nobleman has added a valuable note in prose, replete with gentle philosophy, though pushed to the verge of paradox.

"Nor could the soil its produce yield
Though Coke himself prepared the field,
But for the never-ceasing round
In which both life and death are found,
But chief, when tilth is first begun
Earth meets the air and blessed sun,
Then numbers beyond numbering rise,
Some skim the earth, some scour the skies,
Th' astonish'd farmer toils in vain,
Each hour destroys his ripening grain,
But Providence beholds the scene,
And other beings step between,
Yet let not man presume to know
Their course, nor dare to strike the blow.

"It may be necessary here to come under the poet's license, otherwise vermin of all descriptions, however manifestly destructive in our gardens, ought to be permitted to lay them waste. The economy of nature throughout the minuter gradations of animal life mocks all investigation; yet Providence must undoubtedly have intended that all created beings should be fed as their instincts direct. Trees,

therefore, of all kinds bear their fruits and seeds in a thousand times greater quantity than are necessary for their reproduction, and which must obviously have been intended for animal subsistence. When they grow in a wild state, innumerable tribes of birds and insects take their allotted proportions without interference, and man is contented with what remains, whatever it may be; but in the resorts of luxury he will bear no partnership. The peaches and nectarines on his walls bring a hundred times what would come to his reach, if they grow in the desert, yet he will not spare one of them, but hangs his honeyed bottles on every branch, when wasps and other insects surround them, not indeed in their natural number, but multiplied by the allurements of human monopoly. In the same manner, when men congregate in large cities, and amass greater wealth than is perhaps consistent with a wholesome state of society, thieves and robbers abound in proportion, and the judge at the Old Bailey, like the gardener in the orchard, has a duty imposed upon him to keep them down.

"Cowper in his 'Task' has given the rule for our conduct to the lower world in almost a word; and the latitude he allows to man's acknowledged dominion is surely amply sufficient:

> "'The sum is this: if man's convenience, health,
> Or safety interfere, his rights and claims
> Are paramount, and must extinguish theirs;
> Else they are all — the meanest things that are —
> As free to live, and to enjoy that life,
> As God was free to form them at the first,
> Who in his sovereign wisdom made them all.'

"The whole subject of humanity to animals is so beautifully and strikingly illustrated in this admirable poem, that no parents ought to be satisfied, until their children have that part of it by heart.

"For myself my opinion is, that we rarely succeed in a war of utter extermination against animals we proscribe; and, even if we could prevail, others more mischievous than those we destroy might multiply, perhaps, from their destruction. We ought, therefore, to be contented to destroy the indivi-

duals, or masses of them when they grievously offend, rather than carry on a systematic war against them for their total annihilation. It is thought by many well-informed persons that the destruction of weasels, and creatures of that description, for the preservation of the game, has increased the number of the field rat in many parts of England — an animal more dangerously destructive. It is extremely difficult besides, if not quite impossible, to subdue whole classes of innumerable, and scarcely visible, insects: witness the ineffectual attempts by lime, by soot, and by all that chemistry could bring into action, to overpower the turnip fly, that unrelenting enemy to every farmer. This little epicure feeds on its first leaf, which is soft and smooth, showing itself in a few days after sowing, but when the second or rough leaf appears their repast is over, when they either die, or remove in search of other food. The fact is, that they often move from place to place, and are occasionally billetted upon us by nature upon their march, and we must provide for them the allotted rations under the common penalty of a distress."

Scarcely inferior to the largeness of his sympathy is the eulogy which the author scatters in profuse measure, "full to the brim and running over," upon all his friends and acquaintance, without distinction of politics.

"The Farmer's Vision (he informs us) was written immediately after the battle of Leipsic, whilst Europe was following up the advantage of that conflict, and the victory of Waterloo confirmed this prophetic vision. It cannot, therefore, be considered as flattery nor even partial regard to remark, how greatly the skill and unwearied attention of the commander-in-chief of our army contributed to the glory of that memorable event; since, as great performers on music must have the finest and best-toned instruments to draw out their extraordinary execution, so the most accomplished officers must have the highest disciplined troops to secure their genius in the tremendous crisis of such a battle. Such British troops the illustrious Wellington commanded, when, in a single day, he re-edified a world almost in ruins. I shall never, therefore, think that our national character for generosity and justice is

wound up, until some public reward is conferred by parliament on the Duke of York."

In this spirit of profuse commendation the noble author speaks of Coke of Norfolk as "the most enlightened agriculturist — the soundest politician — and one of the honestest and best men this country ever bred." And of Frederica, Duchess of York, "whose talents, manners, and distinguished accomplishments I should have been more desirous to record in unfading numbers, but no man can add a cubit to his stature, and I must, therefore, content myself in this note to express my affection, admiration, and respect."

In a similar genial spirit of good-humoured allusion to his past and present condition, Lord Erskine described himself in the following lively verses as a guest at a dinner party at Oatlands: —

"Tom Erskine's at last, sailor, soldier, and lawyer,
A cross, beyond doubt, 'tween the de'il and old Sawyer;
He tried all the tricks of the old common law,
Till to Chancery sent, which can cure every flaw;
So merrily, merrily, let him live now
With the planters of trees, and the holders of plough."

However much his admirers may delight in these exhibitions of generous sympathy — and, sooth to say, these little effusions of the heart are more marked by moral than intellectual excellence, evincing a kindness of spirit in their author which age could not blunt, nor adversity harden — the multitudes who revere his memory must regret that he did not devote more of his time and attention to legal studies, and as he might be summoned, on any sudden change of ministry, to resume the weighty matters of the law, that he did not assiduously attend the judicial meetings of the Privy Council, and assist at the hearing of appeals in the House of Lords. By such proofs of professional diligence, Lord Redesdale was enabled, for more than twenty years after he had been driven from the woolsack, to do the state good service, and to strengthen his claim to respectful remembrance with posterity. That Lord Erskine should have declined a like irksome labour may excite, however, feelings more of sorrow than surprise.

To fail where he has been expected to be more proficient than his rivals, must be mortifying in the extreme to a man of sensitive mind, and it is not to be expected that he should invite comparison, or expose himself, where escape is easy, to a proof of deficiency.

The ex-Chancellor made no secret of his inexperience in the mysteries of equity, compared with Lord Eldon or Lord Redesdale, however superior he might be to either in those branches of the law with which he was more peculiarly conversant. To commit an error in some point of practice, and be gently corrected by his successor; to be ignorant of some case directly in opposition to his argument, and be set right by a more learned lord with a subdued air of triumph; to catch an arch smile in the countenance of some shrewd critic below the bar, and hear or suspect the disparaging comment of some Tory peer, was a penance too great for his proud and sensitive spirit willingly to endure. He was not selfish enough to deny the merit of the Chancellor, whose laurels would not have troubled his repose, but he shrunk from the arduous task of competition, and, hopeless of victory, could not conquer in private his distaste to those reports of Ambler and Vesey, which he began to read too late in life thoroughly to master. So careless was he of acquiring even the common forms of the House, that Sir Samuel Romilly, a jealous competitor for the Chancellorship, should ever a vacancy occur, has recorded in his private diary an instance of Erskine's inefficiency: —

"Lord Erskine told me on Saturday, June, 1814, that he should certainly bring on my bills, which he has taken charge of, on this day. He had not, however, given any notice of his intention, or required that the lords should be summoned; and, though he formerly presided in the House as Chancellor for above a year, he was ignorant till he learned from me with surprise and evident mortification, that a previous notice was, according to customary usage, necessary, before he could move the second reading of any bill."

The next year Sir Samuel Romilly discarded his ally: "March 15, 1815. I called this morning on Lord Grenville

to endeavour to prevail on him to take the charge in the House of Lords of my bill for subjecting freehold estates to the payment of simple-contract debts, for, if it continues this year, as it was the last, in the hands of Lord Erskine, who does not understand the subject, and is incapable of answering any objections that are made to it, there is no chance of its being carried."

This carelessness regarding legal forms and inaptitude to legal discussions strengthened each year the public impression, which the Whig ex-solicitor entertained in private life, that, if a Liberal ministry should recover their authority, the great seal could scarcely be again intrusted to the hands of one so indifferent: "with all his talents (and very great they undoubtedly are) his incapacity for the office was too forcibly and too generally felt for him to be again placed in it."

His disinclination to trouble himself with the judicial business of the House of Lords acquired additional vigour from the conclusion to which his brother peers had come, in deciding the case of the Banbury Peerage adversely to his feelings, judgment, and authority. In the investigation of that singular and important claim, one of the most interesting that was ever submitted to the court of the highest judicature, and which is supposed to have wrought a total change in the law of legitimacy, Lord Erskine brought to the aid of the claimant, Lieutenant-Colonel Knollys, his personal friend, an argument which, for its tone of high-minded reasoning, acute analysis of evidence, and beautiful diction, deserves to rank among the finest monuments of judicial ability. It was one of the last judgments the ex-Chancellor pronounced, and his best. However much we may dissent from his legal principles, and acquiesce in the adverse determination — well weighed and confirmed as it has been by recent authorities — the praise of consummate advocacy cannot be denied to his artful exposition of the petitioner's right to the peerage. That the reader may fully appreciate the excellence of the few specimens our space can allow, a short history of the case is presented — a sort of rude portal to the well-wrought fabric of his eloquence.

William Knollys, first Lord Banbury, in December 1605, being then fifty-eight, married the Lady Elizabeth Howard, then little more than nineteen. In 1626, he was created Earl of Banbury, the patent of the earldom stating, "that his majesty intended to have made him first of the earls created at his coronation, but in consequence of his dangerous illness, had resolved to wait until a more convenient time, and therefore now gave him precedence over all earls subsequently created." When parliament met for the first time after Lord Banbury's creation, in March 1628, the Committee of Privileges reported that the law was full and clear, that all peers are to be placed and ranked according to the antiquity of their creations, but also reported a message from the king, that his majesty desires this may pass for once (without prejudice), considering how old a man this lord is, *and childless*, so that he may enjoy it during his time. To this request a murmuring acquiescence was given. The year previous, 1627, the Countess of Banbury had given birth to a son, Edward, and in 1631 had another son, Nicholas. Lord Banbury must have been eighty-four or eighty-five at the period of the birth of his second son, and died in May the following year, 1632, having left a will of earlier date unaltered, and not made any mention of a son in the codicil. An inquisition taken at Burford nine months afterwards, respecting the lands of which he died seised, found that the earl died without heirs male of his body. The Countess of Banbury married Edward Lord Vaux within five weeks of the earl's decease. In 1640 a bill was filed in Chancery by Edward Earl of Banbury, an infant, for the discovery of deeds and writings, against one Stevens, who claimed title under a conveyance for life, or lease for years, from Earl William, and stated that the plaintiff was not his son and heir. Five witnesses were examined to prove his birth at Earl William's mansion-house, and that the earl and countess lived lovingly together. Their depositions, being tendered in evidence in support of the claim in February 1809, were, after referring to the opinions of the judges, rejected as inadmissible to prove the facts stated therein. A commission had, however, in consequence of these depositions, been ordered by the Court of Wards, and the inquisi-

tion held under this writ found that Edward, now Earl of Banbury, is, and at the time of the earl's decease was, his son and next heir. In June 1641, the Countess of Banbury and her youngest son obtained a licence to travel. Edward Knollys, the eldest son of Lord Banbury, assumed the title, and was killed near Calais during his minority in 1646. Nicholas, then fifteen, immediately assumed the title.

When the peers assembled at the convention parliament in April 1660, Earl Banbury's right to the dignity was not questioned till July, nearly three months after parliament had met; and upwards of one month afterwards he is mentioned as present in the House of Lords. A day was appointed for investigating the earl's right to the title, but no proceedings took place, and he sat undisturbed till December. On the meeting of parliament in May the following year, no writ was issued to the Earl of Banbury, who immediately petitioned the king that he might enjoy all the precedency and privileges granted by the letters patent of that dignity. This claim excited the jealousy of the eight earls who had been created between the coronation and date of his father's patent; but the Committee of Privileges heard his counsel and witnesses, who proved that Nicholas was born at the house of Lord Vaux, and equivocated in their testimony. The committee reported that Nicholas Earl of Banbury is a legitimate person. The Attorney-General objected to issuing a writ of summons, on the ground, that the Earl of Banbury was reputed childless, as proved by his majesty's message, and for the strictly technical reason that the *inquisitio post mortem*, 9 Car. I., had found that the late earl died without issue male, which could not be avoided without a traverse. The description in the settlement deed of 1646 was the Right Honourable Nicholas, now Earl of Banbury, heretofore called Nicholas Vaux; and the Attorney-General laid stress on this designation, and on the fact of the countess marrying within five weeks; but hasty marriages, though suspicious, were by no means uncommon, and the marriage settlement of Lord Banbury himself with the countess was executed within little more than two months after the death of his first wife.

The House would not adopt the report of the Committee of Privileges, but had the whole matter examined at the bar, and directed that the report should be recommitted. The committee again reported that Nicholas Earl of Banbury, being in the eye of the law son to the late earl, the House should advise the king to send him a writ to come to parliament, but no writ was ever sent. In 1670 Lord Banbury presented a petition to the House of Lords, "that he may receive such a writ of summons to the parliament, as may enable him to serve his majesty there, according to the duty of his place and quality." No proceedings took place, and in four years the earl died. His son Charles attained his majority in 1684, and the very next year petitioned for his summons. His prayers proving equally futile, he did an act which compelled a decision. Having the misfortune to kill his brother-in-law in a duel, he was indicted by the name of Charles Knollys, Esq., and prayed the House of Lords that he might be tried by his peers: it was resolved that he had no right to the title, and that his petition should be dismissed. He was more fortunate in the Queen's Bench, where his plea in abatement, "he not being named Earl of Banbury in the indictment," was allowed by the four judges. The brave Chief Justice Holt refused to give the angry Lords the reasons for his judgment, asserting with manly freedom, "What a judge does in open court, he can never be arraigned for it as a judge. I am not in any way to be arraigned for what I do judicially. The judgment may be arraigned in a proper method by writ of error." Some rash peers would fain have sent the independent judge to the Tower for presuming to dispute their jurisdiction; but the counsels of more discreet senators prevailed, and the majesty of the law was successfully vindicated. The precedent has been followed in our own times, which have seen with admiration the Chief Justice of the Queen's Bench scorning to succumb to the usurped tyranny of the lower branch of the legislature, and equally triumphant in his spirited opposition.

Charles, Earl of Banbury, renewed his claim in 1712 by petitioning Queen Anne, whose demise put a sudden stop to the proceedings then in agitation. The unlucky peer renewed

his prayer on the accession of George II., and the Attorney-General reported that a new reference to the House of Lords on the claim was a matter not of law but of prudence, which must be left to the king's determination; the royal will was adverse, and for nearly eighty years the claim rested in abeyance, without any abandonment of the right, but without a renewal of struggles long importunate, and always defeated.

The descendants bore a barren title, but made no further effort to force open the reluctant door of the House of Lords till the commencement of the present century, when, on a prayer from Colonel Knollys by the style of William, Earl of Banbury, Sir Vicary Gibbs reported in favour of referring his petition to the House of Lords, where it lay under close scrutiny and discussion eight or nine years. At the final hearing, against that strong phalanx of lawyers, Lords Eldon, Ellenborough, and Redesdale, Lord Erskine earnestly contended that all the facts on which they relied might have occurred, and yet the children have been the real issue of their ostensible father.

"Notwithstanding all that has been urged by the noble and learned lords opposite, I adhere to the opinion I expressed at an early period of the debate. I admit that the claimant labours under great disadvantage. The facts involved in his case are extraordinary, and the grave has long since closed over all the individuals whose evidence could afford him any assistance. His claim is almost as old as the patent of his ancestor, and successive generations have passed away without a recognition of it by this House. Yet time would be the instrument of injustice if it operated to raise any legal bar to the claimant's right. Questions of peerage are not fettered by the rules of law, that prescribe the limitation of actions, and it is one of the brightest privileges of our order that we transmit to our descendants a title to the honours we have inherited, or earned, which is incapable either of alienation or surrender. But I will go further, and assert, that lapse of time ought not in any way to prejudice the claimant, for what laches can be imputed in a case where there has been continual claim? Nicholas, the second Earl of Banbury, presented his petition as soon as there was a monarch on the

throne to receive it; and a series of claims have been kept up by his issue to the present hour.

"The rules relating to the bastardy of children born in wedlock may be reduced to a single point, *i. e.* that the presumption in favour of the legitimacy of the child must stand until the contrary be proved by the *impossibility* of the husband being the father, and this impossibility must arise, either from his physical inability, or from non-access. It has been urged that strong improbability is sufficient, but this I confidently deny. We do not sit here to balance improbabilities on such a topic as this. . . . . The nature of the presumption arising from the access of the husband being ascertained, it is evident, that, if access can be proved, the inference from it is irresistible, whatever moral probability may exist of the adulterer being the father; whatever suspicions may arise from the conduct of the wife, or the situation of the family; the issue must be legitimate. Such is the law of the land. Women are not shut up here as in the Eastern world, and the presumption of their virtue is inseparable from their liberty. If the presumption was once overthrown, the field would be laid open to unlimited inquiries into the privacy of domestic life; no man's legitimacy would be secure, and the law would be accessory to the perpetration of every species of imposture and iniquity."

Lord Erskine then cited several cases in which reputation, adultery, treatment of the child, all went for nothing, as non-access could not be shown; dwelling especially on the case of Boughton v. Boughton, tried before Lord Ellenborough.

"The separation of the husband and wife — the intercourse of the latter with Sir Edward Boughton — and the recognition of the child by that gentleman, were fully established. The baptismal register — the conduct of the mother — the reputation of the world — and the proceedings in Chancery marked her as an illegitimate child. The single circumstance of the mother's husband being alive was all that could be urged to the contrary. The legal presumption in favour of legitimacy wrung a verdict from the jury, which no one can doubt they would have gladly withheld.

"From these principles, supported by these cases, I infer

that, without proof of non-access, the presumption derivable from access must be conclusive. Such is the law of England as it existed from early times to the present hour. I am not here to defend the law, but to administer it. Perhaps the lawgiver may have laid down a rule not always infallible; he may in some instances have diverted hereditary wealth from its proper channel, by enriching the fruit of an adulterous intercourse, and he may thus have created the relation of parent and child where it had no real existence. In my opinion these occasional, and very rare, deviations from justice amount to nothing more than the price, which every member of the community may be called upon to pay for the privilege of an enlightened code. No laws can be framed sufficiently comprehensive to embrace the infinite varieties of human action, and the labours of the lawgiver must be confined to the development of those principles, which constitute the support and security of society. He views man with reference to the general good, and that alone. He legislates for men in general, and not for particular cases. No one can doubt that the interests of society are best consulted by making a question of such frequent occurrence as legitimacy to rest on a limited number of distinct facts, easy to be proved, but not to be counterfeited, instead of leaving it to be the result of inference from a series of indefinite facts, separately trifling, and only of importance collectively from the object to which they are applied. Marriage and cohabitation afford us a more sure solution of the question of legitimacy than we could arrive at by any reasoning on the conduct of the husband and wife."

He then artfully combats the presumption drawn from the extreme age of Lord Banbury:—

"There is no statute of limitations on the powers and faculties of man. Instances of robust longevity might be cited still more extraordinary. Sir Stephen Fox married at the age of 77, and had four children; the first child was born when the father was 78, the second and third were twins in the following year, and the fourth was born when the father was 81. The Earl of Ilchester and Lord Holland can vouch for the accuracy of this statement, and, I believe, their gene-

alogy has stood hitherto unquestioned. Parr became a father when even his son was of a more advanced age than Lord Banbury. Moreover, his lordship seems to have kept all his faculties both of body and mind in full exercise. Not only does it appear from the evidence of one of the witnesses that he went out hawking up to his death, but the Journals of the House furnish us with the best evidence of his attention to more important matters.

"Nicholas, the original claimant, has been traced from his cradle to his grave, and every period of his life has been scrutinised in order to procure evidence of his illegitimacy. The dim twilight of two centuries has gathered round the events of his obscure career, and prevents us from forming a correct estimate of either their intrinsic or relative importance. If indeed we could transport ourselves to the troubled times in which he lived, we might venture to draw inferences from the vicissitudes of his domestic history, but it is now become a most fallacious experiment.

"Why is the bounty of Lord Vaux to his step-son to be ascribed to another motive than what belonged to such a relationship? Why is it to be assumed that he has repudiated the title of Banbury because he had been called in his earliest childhood by the name of Vaux? These are weak arms to encounter a presumption so strong as that which exists in favour of legitimacy.

"I trust, my Lords, that I have established that the opinion of the law entertained by the committee in 1699 was well founded, and that Nicholas, the original claimant, ought to have been admitted to the full enjoyment and privileges of this earldom. The same rights have descended to the present petitioner, and I trust they will be recognised by your lordships."

All Erskine's efforts were in vain. The committee of privileges resolved to report, by a majority of twenty-one to thirteen, that the petitioner had not made out his claim to the title, dignity, and honour of Earl of Banbury. But of this number four were spiritual lords, who had never attended the proceedings; and of the remaining seventeen, ten only attended occasionally. The whole thirteen comprising the

minority had constantly attended.* Upon those who voted, General Knollys, the present claimant, feelingly observes: "Death, since these proceedings took place, has been busy on both sides; but it seems to have moved with even accelerated step in that distinguished rank, which included, as most impressed with the justice of the claim, among lawyers, the names of Erskine, Romilly, Perceval, and Hargrave; and some the most illustrious by their birth in the kingdom, and some that were absent on the day of trial, whose places were occupied by strange faces, assembled to give countenance to strange opinions."

Lord Erskine drew up a long, forcible, and eloquent protest, which was signed by the Dukes of Kent, Sussex, and Gloucester, and seven other peers; and in justification of this memorial the noble writer remarks, in a letter to his friend,—

"The protest gives them every fact, and all their arguments; but, giving them both, leaves them without a single voice in Westminster Hall from one end to the other. We protest"—(such was the conclusion of this voluminous but admirable document, the longest, yet most able, on the journals of the House of Lords)—"We protest, for the reasons which we have recorded at such unusual length, because an unreasoned dissent would have thrown no light upon the grounds of a decision of vital importance in its consequences to the inheritance of the peerage, and because it would have been unworthy to have discussed it partially, so as to bring into discredit the justice of the House, whose decisions it is our duty to reverence and support."

For several years after this mortifying defeat, the wit and eloquence of Erskine ceased to light up the tapestried chamber, and soften the asperities of debate. But when the political horizon began to be overcast, and the gathering discontents of the multitude appeared to the government to call for severe legislative enactments, the friend of the people re-appeared in his place to deprecate coercion, and advocate freedom of opinion. The wild agrarian notions then afloat he would rather correct by the voice of the schoolmaster, than by the rod of the magistrate.

* Case of General Knollys.

"As to the Spenceans, they could not be gravely considered as objects of criminal justice. Instead of the warrants of magistrates, the certificates of apothecaries might secure their persons, if they became dangerous. What other prison, indeed, but a madhouse, could be opened to receive persons so completely insane as to entertain an expectation, that, in such a country as England, they could bring its whole surface and property into general division and distribution!" To quiet the alarms then prevalent in the metropolis from the violence of an anti-corn law mob, Lord Erskine volunteered his aid, and related anecdotes of his experience in tumult: "that he was in Bloomsbury Square when the mob, during the riots of 1780, were preparing to attack the house of Lord Mansfield, and offered to defend it with a small military force, but this offer was unluckily rejected; that he was afterwards in the Temple when the rioters were preparing to force the gate, having fired several houses; that he went forward to the gate, which he opened, and stood beside a field-piece prepared to fire in case the attack had been persisted in, but the populace were daunted, and fell back," &c. &c.

The results of his late practical knowledge in *rustication* are told with more grace than these somewhat vain-glorious recollections:

"Confide, my lords, in the people, and they will make the return of a corresponding confidence. Your lordships may very probably think the illustration of this truth, which I cannot help at this moment having resort to, is a very strange one; but we are apt to take up our analogies and the expressions of our opinions and feelings from the objects in which we are most frequently engaged. Driven out as I have been, my lords, from the paradise of the law, and sent to till the common ground, I would liken this condition of a government to a late one of my own. Having engaged a celebrated drainer to lay dry a part of my estate, and being alarmed at seeing the water oozing out in every direction, I asked him if he thought he could remove it except at an expense beyond the value of the land? His answer was, 'Certainly not, when once the water finds its way here; but I can stop it at its source, at a very small expense, and prevent it from coming

here at all.' This is just your case: when once the multitude are discontented and indignant at misgovernment, all the parchment in England cut up into ex-efficio informations would be no kind of cure for libels, but could only increase and inflame them."

When government persisted in their coercive measures, Lord Erskine played off his battery of humour on the most obnoxious of the Six Acts with considerable effect:

"What evidence have we of a traitorous correspondence? — only the affirmations of A, B, C, and others, their companions!" [The names of the witnesses before the select committee had been printed with their initials merely.] I have not been accustomed to deal with these alphabetical witnesses, though I am obliged to confess that when I came to O. P., I thought there must have been a riot."

The orator inveighed scoffingly against the injustice of driving a man from his country for a second offence in publishing a seditious libel. "Banishment was only a mode of punishment by the Scotch laws. He had been banished into England himself exactly fifty-one years and a few days."

In opposing the Seditious Meetings Bill with more grave weapons of oratory, Lord Erskine confessed the secret of his comparative inefficiency as a debater:

"I despair altogether of making any impression by any thing I can say; a feeling which disqualifies me from speaking as I ought. I have been accustomed during the greatest part of my life to be animated by the hope and expectation that I might not be speaking in vain; a sensation without which there can be no energy in discourse. I have often heard it said, and I believe it to be true, that even the most eloquent man living, (how then must I be disabled?) and however deeply impressed with his subject, could scarcely find utterance, if he were to be standing up alone, and speaking only against a wall."

In June 1818, Lord Erskine brought in a bill to prevent arrests on charges of libel before indictment found. The Chancellor in a single word disposed at once of the main question, by asserting, that there was no such doubt upon the

law, as the preamble recited. His precipitancy was thus rebuked with effective good humour:

"We are but too apt, after having delivered an opinion, rather to combat in its support, than to open the mind to impartial consideration; yet I ought not to be afraid of this. My noble and learned friend can surely well afford to say he was mistaken: it would not at all affect his reputation for learning, but would on the contrary exalt it. There shoots across my mind at this moment a striking instance of this candour in Lord Mansfield, which I have long treasured up in my memory, having a strong interest to remember it, because it was useful to me in the beginning of my professional life. Having been engaged in a cause, in which that great chief justice had strongly supported the cause of my client, the jury found a corresponding verdict; but a rule having been obtained to set it aside for the judge's misdirection, I had to support his opinion in the Court of King's Bench. When I had finished my argument, he said—I fear with more indulgence than truth—'This case has been remarkably well argued; so well, indeed, that whilst the learned counsel was supporting my direction, I began to think I had been in the right, whereas I never was more mistaken in my life. I totally misunderstood the case, and misdirected the jury; so there must be a new trial, and without costs.' Did this lower Lord Mansfield? So far from it, that, having persuaded myself his first opinion was the best, I could not help saying at the time, that, if I had not been convinced of his integrity, I should have thought he was practising a fraud to advance his reputation. It was, indeed, a justice to truth, which weak men are afraid of making, and therefore it is so seldom made."

The orator's well founded complaint of an effect so deadening to eloquence as an audience fixedly adverse, and a certain prejudged conclusion, was soon to be triumphantly removed. That extraordinary and miserable spectacle, the investigation of the guilt of Queen Caroline of Brunswick, succeeded, to divide the opinions and absorb the close attention of the assembled peers. However strongly the reader may dissent from Erskine's judgment as to the innocence of that unhappy princess, his sympathies with magnanimous

conduct would be cold indeed, were he not to pay a tribute of warm and grateful admiration to the chivalrous and disinterested bearing of the advocate on that unprecedented trial. Attached to the king by marks of personal kindness and long habits of intimacy, and almost a stranger to the queen, he yet took the part of one whom he deemed oppressed and borne down by calumny, with an energy and feeling which kindled in his veins the forgotten fires of his youth. Party prejudice might, it is true, quicken his zeal—for the opposition made the cause their own; but these ties only slightly bound him, and his voice and vote were opposed to long-cherished predilections. He declared on the opening of the court that he would do his duty, as if all the angels in heaven were taking notes of whatever passed through his mind on the subject; and who can disbelieve the solemn assertion?

"It is impossible," he said, when opposing the second reading of the bill, "to contend that this was not a national offence, and her majesty, if guilty, was clearly amenable to the House of Commons by impeachment for a high misdemeanor; and for this reason, my lords, (even if I gave credit to the evidence, which I do not,) I should equally reject the further progress of this bill. I am now drawing near to the close of a long life, and I must end it as I began it. If you strike out of it, my lords, some usefulness, perhaps, in doing my part to aid in securing the sacred privileges of impartial trial to the people of this country, and by example to spread it throughout the world, what would be left to me? What else seated me here? What else would there be to distinguish me from the most useless and insignificant among mankind? Nothing, just nothing; and shall I then consent to this suicide, this worse than suicide of the body; this dereliction of what can alone remain to me after death, the goodwill of my countrymen hereafter? I dare not do that—(His voice*, we are told, here suddenly ceased in the middle of his sentence, and after a long pause, he fell forward on the table in a senseless state: on raising his lordship, his speech and colour were gone. They were obliged to carry him out

* New Parliamentary Debates for 1820.

of the house to an adjoining room. His complaint was found to have arisen from a sudden and violent cramp in the stomach, which was greatly distended, his pulse for some time entirely ceased.)

Having recovered, he resumed his argument a few days afterwards, and denounced the revolting part of the case for the prosecution, that a witness should be supported, as deserving some credit, who had been proved to be perjured. 'This reminds me of the strongest parallel case that I believe ever existed. An attorney of the name of Underwood had forged the will of a person at Bath, who died intestate: he had sworn to his being sent for, to his seeing the testator, and to the making and execution of the will, describing the very curtains of the bed he lay in, and the very colour of the ribbon round his head. He then turned king's evidence, and to support an indictment was called to deny all this, though he had obtained a probate of the will on his own affidavit, swearing to all the facts I have stated. He was, I think, improperly admitted; but on his coming forward to deny every word he had sworn formerly, being the very fact in issue, I would not even sit in court to hear such testimony, and my friend Mr. Baron Garrow, now on the woolsack, who was counsel also in the cause, went out along with me into the sheriff's apartment at the Old Bailey whilst he was examined, although our clients, who had no other advocates, were on trial for their lives; but they ran no risk, and the best service, indeed, we could render either to them, or to the public, was to show our utter contempt for such a witness.

"If his majesty were ever exposed to any thing injurious, I should be ready to protect him at the peril of my life, and to contribute to his happiness by every sacrifice but that of my duty. My principles I never have deserted, and never will desert. (Loud cheers.) When I could scarcely see the table before me for the petitions of the Dissenters which I presented to the House, no minister could have carried the Toleration Act through, and on my motion it was instantly and without a struggle rejected, just as this measure, if persevered in, must infallibly perish."

The only nice points of evidence, which sprung up during the trial were argued by the ex-Chancellor with equal ability and acuteness. "It was the only mark of declining vigour," says Lord Brougham, "which Erskine betrayed, that in the course of the Queen's case he dreaded to come in conflict with the judges, even on some points which there is now no reason to doubt were wrongly decided, and which he accurately perceived at the time were erroneously determined."

When Lord Liverpool, after the slight majority of nine on the third reading, had moved that the further consideration of the bill be adjourned to that day six months, Erskine sprung up:

"I see the fate of this odious measure consummated. I heartily rejoice at this event. My lords, I am an old man, and my life, whether it has been for good or for evil, has been passed under the sacred rule of the law. In this moment I feel my strength renovated by that rule being restored. The accursed charge, wherewith we had all been menaced, has passed over our heads. There is an end of that horrid and portentous excrescence of a new law retrospective, iniquitous, and oppressive, and the constitution and the scheme of our polity is once more safe. My heart is too full of the escape we have just had to let me do more than praise the blessings of the system we have regained, but I cannot praise them adequately myself, and I prefer expressing my own sentiments in the fine language of one of the most eloquent authors of any age." He then cited the well known passage of Hooker, "of law there can be no less acknowledged than that her seat is the bosom of God," &c.* •

With this triumphant finalé, amid the cheers of an admiring audience, the curtain dropped on the political performance of this great actor in the House of Lords. The distinguished part which he took in advocating the innocence of the queen restored his long-forgotten popularity, and threw a transient gleam over the closing years of his now clouded life. He was invited to a public dinner in the Assembly Rooms at Edinburgh, at which the Duke of Hamilton was, invited to

* Parliamentary Debates for 1820.

preside, and which was attended by the élite of the Scottish Whigs, Cockburn, Jeffrey, Murray, Moncrieff, and Cranstoun. They drank the health of plain Thomas Erskine, the memory of the acquittal of Hardy, and revived in his breast the scenes of forensic triumph that had long gone by. He was seen to shed tears at one of these allusions to the glories of former days. Among other anecdotes, with which he rewarded the respectful attention and homage of his hosts, was the following short history of the first case he ever answered:

"It was a case sent to him by a friend of his, who was inclined to magnify facts. The client complained of a painter who had broken his written contract to paint a house, and the case stated that A. would prove this, B. that, and C. the other fact, and concluded with this laconic question: 'Will an action lie?' To which he answered in terms as laconic, 'Yes, if all the witnesses will lie too.'"

Mrs. Grant of Laggan, a warm partizan of the Tory party at a time when politics ran most high, has given a clever but prejudiced account of this celebrated visit.

"The party have been paying great homage to Lord Erskine, and talking of his return to Scotland after fifty-one years' absence, as if a comet had re-appeared. I was asked to meet him last Saturday night, and saw him surrounded by all his satellites. He is a shattered wreck of a man, decked with a brilliant diamond star,—this decoration he wore, I was told, as a Knight of the Thistle. I always thought of him with the deep straw bonnet which he wore on his Gretna Green expedition. On Monday the great dinner was given to the ex-Chancellor; several great persons were expected, but none of them came. I observe that these despisers of rank are wonderfully vain of getting a title to grace their meetings. The Duke of Hamilton and one or two more dignitaries were expected both at the Fox dinner and now, but in vain."

As this was the first visit of Lord Erskine to his native city for above half a century, a popular demonstration of applause was attempted, and circulars were sent round the boxes on the night of his visit to the theatre, that the lawyer, who had conferred so much honour on his country, might be

greeted as he deserved. Sir Walter Scott condemns this as a mendicant effort at popularity; but there is no proof that Lord Erskine was privy to the perhaps officious zeal of his friends, and every allowance should be made for an over-eagerness to obtain the favourable suffrages of his countrymen in one, who having been so long estranged from them, pursuing a great and ambitious career elsewhere, would fain seek in their applause the faint echoes of what he had been.

The pleasures of life now lay chiefly in vivid memories of the past, and, but for occasional appeals to attention through the press, the veteran lawyer would henceforth have been forgotten by his contemporaries.

A radical pamphlet, published in 1820, made the ex-Chancellor an especial object of personal attack. "It was," said the caustic writer, "on the 9th November, 1794, that I harnessed myself to the carriage of the Honourable Thomas Erskine. My lord, you should have died when you descended from the triumph of that memorable day. Had your life closed with the procession, you would have gone down to posterity pure and entire."

The pamphleteer, with more ill-nature than point, proceeded to sneer at Lord Erskine for accepting the Order of the Thistle from the Prince Regent. Though retired from active service, the gallant Scottish knight was too stout-hearted a veteran not instantly to take up the gauntlet thus ungenerously thrown down. In his able defence of the Whigs, he explained that the Order had been offered by an old friend and patron, without the slightest solicitation, as a proof of private and personal esteem, and confessed an honest pride in the gift, being of the family of the king who instituted the Order. "So much for the green ribbon, which I have only at all adverted to, because I will not suffer even a squib to come across the unsullied path of my public life, without publicly treading it out."

It should be mentioned to his honour, that so far from inviting the favour of the Prince by any courtly change of political opinions, he had voluntarily incurred his displeasure by an independent avowal of them. At a public dinner he had maintained against his Royal Highness a warm defence

of those principles, which, he said, placed the House of Brunswick upon the throne. "They are principles," retorted the Prince Regent, "which would unseat any family from any throne!"

In his present pamphlet Lord Erskine fills the character of laudator temporis acti, and loudly proclaims the Io Pæans of the Whigs.

"Mr. Fox, at the head of a band of patriots, now calumniated as a worthless faction, brought in and carried through his Libel Bill, which it would be folly to eulogise, because it is universally admitted to be a statute which, if expunged from our records, would as completely and effectually destroy the freedom of speech and writing, as if the king were dethroned by an invasion of the Turks." And again:

"The administration of 1806 raised up the whole people of this land nearer to the throne of a God of love and mercy, by the abolition of the Slave Trade!"

Combating the proposition that those who have differed in parliament ought never afterwards to unite, Lord Erskine says, "It is a most fortunate circumstance that the debates, however vehement, engender no malignant passions; if the rules of decency are grossly overstepped, it is settled as between men of honour; but even in these cases it is the very genius of that high assembly to compose all personal quarrels. Political hostilities, though connected with the exclusive enjoyment of emoluments and dignities, very rarely disturb the intercourse, or even the kindnesses, of private life. God forbid that so beautiful a feature of our public councils should be disfigured by branding reconciliation as criminal, when no principles are sacrificed, nor the prosperity of the people overlooked!"

With equal vigour the noble pamphleteer denounces the principle which strikes at the very form and condition of social life, that all influence in popular elections is unjust and illegal: "It may not, indeed it cannot always, happen, that every man in Westminster who pays to the public taxes, has had leisure, amidst laborious occupations, to consider the claims of candidates to distinction and preference. Such persons may fairly trust in the opinions and repose in the wishes

of their benefactors, their employers, and friends; and it is not corruption in enlightened men, who can see clearly the interests of their country, to use their influence with persons less qualified to investigate these subjects; but whether I am right or wrong in this, it always did and always must happen in popular elections, unless God shall be pleased completely to recast the nature and character of man."

The veteran politician in his defence of pensions and sinecures, sides with the old Whigs in preference to the new. "I know that a sinecure office is as much a man's freehold as his property; and I think that ministers mistook the character of our monarchy, when they consented that several of them, and of very old standing, should be abolished. All the opposition, except Lord Lauderdale and myself, were of a different opinion."

Some of his old-fashioned opinions upon subjects of political economy would be equally unpopular at the present day. "It was well observed by Mr. Holme Sumner that a successful clamour for cheap bread, by the encouragement of foreign importers would soon leave the people no bread at all; and what can be more manifestly true? . . . . No schemes for the sustentation of the poor, however judicious, will be attended with any material relief to the country, until we shut our ports by a higher scale than we have adopted."

Though now foremost in the cry for free trade in corn and every commodity, this was, in the days of Lord Erskine's clever pamphlet, the favourite theory of the Whigs."

In 1822, shortly after Mr. Canning's appointment to the post of foreign secretary, Lord Erskine published a letter to the Earl of Liverpool on the subject of the Greeks, full of good feeling and false rhetoric: *i. e.* "I feel whilst I am writing that the ink must first have become blood, to enable me fitly to express my detestation and abhorrence of their Turkish oppressors. To judge of what the Greeks under good government are capable of being, we have only to look back to what they have been. Their pedigrees, in which we can trace so many great men, who never should have died, ought to protect them from the Saracens, who cannot show in all their escutcheons a single man who should have lived."

Giving it as his opinion that the Turks should be thrust forth at once from Europe, he declares that "he would confide the matter to some long-practised diplomatist, with the assistance of a lawyer to draw up the notice to quit."

In this eagerness to expel the sons of the prophet from the fair shores of Greece, Lord Erskine was joined by the eccentric and accomplished Lord Dudley and Ward, who wrote in a similar strain at this period to the Bishop of Llandaff, Sept. 1820.

"I am almost as enthusiastic on the subject of the Greeks as a German student, and I earnestly hope that no narrow over-refined notions about the balance of power will induce the English government to stretch out a saving hand to the Porte. I have always reckoned it to be the great disgrace of Christendom to suffer these hateful barbarians the Turks to remain encamped upon the finest and most renowned part of Europe, for upwards of four centuries, during at least two of which it has been in our power to drive them out whenever we pleased. Let us at least have one civilised and Christian quarter of the globe, although it be the smallest."

Incidentally dilating on the horrors of the Slave Trade, Lord Erskine apologises for the warmth of his feelings by a retrospect of his past life:

"After having in my earliest youth been an eye-witness to the enormities of this cruel traffic, when at its diabolical height; after having seen upon the coasts of Africa the most unoffending of human beings torn from their parents and kindred, or deprived along with them, not only of liberty, but even of the light of heaven, chained down almost to suffocation in the breathless holds of a Guinea ship; after having repeatedly beheld the hapless victims in this deplorable condition, and accompanying them in their paths over an unhearing ocean, have seen them thrown overboard, as they died, to the devouring sharks, that instinctively followed them in their course; when, having seen long afterwards, and almost daily, for years together, those our unhappy brethren considered merely as property in our courts of justice, and been myself often personally engaged in investigating, as matters of account with underwriters, the cause of their murderous

deaths — when driven to desperation, during insurrections, they have plunged into the sea for escape — when, after all this, it fell at last to my lot, and through ways as unaccountable as unexampled, to preside in the Lords' House of Parliament on their deliverance — to hold up in my hands the great charter of their freedom, and with my voice to pronounce that it should be law, your lordship, I am sure, whom I respect and regard as a man of honour and feeling, (the letter was addressed to Lord Liverpool,) will rather approve than condemn my retaining the whole subject of slavery in the most affecting remembrance."

A passing smile at the earnestness of these remarks may be indulged by those who have read the attestation borne by Wilberforce in his Diary, to a former very different state of feeling: —

"That the general bias of the bar was in favour of an established trade in slaves with Africa was confirmed by the defence which burst from the boisterous Thurlow, and for a moment trembled upon the lips of Erskine." "The bar were all against us upon the question of the African Slave Trade. Fox could scarcely prevent Erskine from making a set speech in favour of the trade." He afterwards notes down—"Erskine with us; but always absenting himself."

The distance of time and improved tone of public feeling will sufficiently account for this inconsistency of sentiment. That the expression of his opinions at the moment was sincere, none who knew his ingenuous and open temperament could for a moment doubt.

The noble author forwarded his pamphlet on the Greeks to Lady Morgan, which, his fair correspondent observes, "is worth citing, as a testimony to prove that years do not make age, and that freshness of feeling and youthful ardour in a great cause may survive the corporeal decay, which time never spares even to protracted sensibility." The place from which it is dated is not the least remarkable part of the note.

"Dear Lady Morgan,

"A long time ago, in one of your works (all of which I have read with great satisfaction) I remember you having expressed

your approbation of my style of writing, and a wish that I would lose no occasion of rendering it useful. I wish I could agree with your ladyship in your kind and partial opinion; but, as there never was an occasion in which it can be more useful to excite popular feeling than in the cause of the Greeks, I send your ladyship a copy of the second edition, published a few days ago. With regard and esteem, &c. &c. E.

"No. 13, Arabella Row, Pimlico, London, October 11, 1822."

His last fleeting publication was written the year of his death, in January, 1823, and is intituled "A Letter to the Proprietors and Occupiers of Land, on the Causes and Remedies for the decline of Agricultural Prosperity." Tracing the ruined state of landed property to an excessive and most unequal taxation, and most impolitic departure from the principle of the poor laws, he illustrates his positions with some force and humour:

"Nothing can be more unjust than to intercept, as a tax upon property, the uncertain and fluctuating gains derived from professional industry and skill, dependent for their continuance, not only upon life, but upon health and strength, and even upon the opinions or favours of others. A friend of mine in Sussex had a useful servant, who managed his small farm, and, being satisfied with his services, gave him higher wages than the common rate; a comfortable house to live in, besides fire-wood, with some little advantages, which occasionally occurred. Nevertheless this innocent-minded man, in a state of breathless agitation, addressed his master as follows: — 'Master, be I bound to maintain five children?' To which the master said, 'Whose children are they?' 'Why, my own,' was the answer; to which the gentleman replied, 'Who else should maintain them?' 'Why, the parish,' replied the countryman, still more agitated. 'What can you mean by that?' said the master; 'have you not sufficient wages to maintain your wife and children comfortably?' 'Why, to be sure I have,' said the countryman, 'thanks to your honour's kindness; my wife is a sober good woman, so that we lays by a few shillings a week; but why be I to have no money from the parish, when every one else is paid who has children?' The end of this dialogue was that the man

was directed never to think of the parish any more, and he now lives contented in his place."

It is a convincing proof of the buoyant temperament of the author, whose work might have been thought juvenile from internal evidence, that he should have continued gay and jocund in society, ready with his jest and pleasantry to the verge of life. That penalty, however, which old age must pay — the death of early friends and companions — drove the iron of affliction into his soul, for not even adversity or age could harden his gentle nature. In 1823 he lost a dear and valued friend in Dr. Parr. The last letter in their long correspondence proves that the gaiety of the writer was as untiring as his friendship, and that he preserved to the last his pleasing powers of versification:

"My very dear Parr, Buchan Hill, Feb. 17. 1822.

"If you wonder why I have not sooner thanked you for your most kind and delightful letter, which I shall keep as an heirloom, it can only be from not having duly considered how difficult it is to find words to acknowledge it. I have read it over and over again, and my children shall read it hereafter. There was an inaccuracy in my little sonnet upon the infant Hampden, which should run thus:

"Thy infant years, dear child, had passed unknown,
As wine had flown upon thy natal day;
But that the name of Hampden fires each soul,
To sit with rapture round thy birth-day bowl —
Honest remembrance of his high renown,
In the great cause of law and liberty.
"Should Heaven extend thy days to man's estate,
Follow his bright example; scorn to yield
To servile judgments; boldly plead the claim
Of British rights, and should the sacred flame
Of eloquence die in corrupt debate,
Like Hampden, urge their justice in the field.

"These last lines may one day get this young gentleman hanged, unless we can take our just turn in hanging very many who so richly deserve it.

"I have not seen any account of Miss Greathead's marriage

otherwise I should have written to him, as you most properly wished me to do.

"Yours, very affectionately,

"ERSKINE."

In his will Dr. Parr spoke in terms of grateful esteem of his noble correspondent. "I give to the right honourable Lord Erskine a mourning-ring, as a mark of my unfeigned respect for his noble exertions in defending the constitutional rights of juries, and the freedom of the press, and for his vigorous and effectual resistance to the odious principle of constructive and accumulative treasons, and, I thankfully add, for his disinterested acts of kindness to my sister and myself."

He had many sorrows to contend against in old age, sharpened by his own imprudence. He had diminished his reputation, and increased his domestic inquietudes, by a second thoughtless marriage with Miss Sarah Buck.—The excuse suggested by Sheridan, applying two lines of Dryden,

> "When men like Erskine go astray,
> The stars are more in fault than they,"

will hardly be admitted by the moralist. The absence of occupation, to which he was condemned, forms a better apology for his errors. He is described as driving about London with *a tiger* in a gig, who knocked at the house where he intended to call, with a postman's knock. Lord Erskine had observed that servants always answered knocks of that kind more punctually than any other.

Pecuniary embarrassments mixed additional wormwood in his cup of bitterness. His large professional gains had been impaired by foolish investments. To the first inquisition on the income-tax he made a return of 5500*l.* a year, and the profits of several years must have been considerably more. He lost money on American securities, and made an injudicious purchase for 40,000*l.* of land in Sussex, on a wild speculation to supply all London with birch, which proved a complete failure. From a fall in the price of land, especially that of a poor soil, his investment became considerably deteriorated in value. By a singular run of ill-luck he was disappointed of large expectations, a recovery suffered for the

express purpose of confirming the will having deprived him of some valuable estate in Derbyshire, that an admirer of his talents had bequeathed him.

The sudden reduction of his income to 4000*l.* a year, burdened with a peerage and a numerous family of children and grand-children, involved the ex-Chancellor in difficulties from which he never extricated himself, and which must have embittered the closing scenes of life. It was not one of his failings to undervalue money; but what he had acquired with ease, he dispensed freely. As formerly mentioned, he had contributed large sums to the improvement of his favourite seat at Hampstead, where he passed his happiest years. This, with other landed property, he was constrained to abandon. He dates his protest on Queen Caroline's trial, like his note to Lady Morgan, from Arabella Row, Pimlico.

Still amid misfortune he retained his good humour, and quitted the House of Lords with a joke, that Lords Eldon and Redesdale made such excellent judges of appeal that they ought to be impounded in the House. When questioned by Sir George Sinclair as to his opinions on a paper currency, he wrote laughingly, that his complaints related more to the quantity than to the quality of bank-notes. Captain Parry was once asked at a dinner party, where the veteran joker was present, what he and his crew had lived upon when they were frozen on the Polar Sea. Parry said they lived upon the seals. "And very good living too," exclaimed Lord Erskine, "if you keep them long enough."

Of his continued liveliness and pleasantry in society, a speaking likeness has been presented by the American minister, Mr. Rush.

"At an evening party at the Duke of Cumberland's in 1818, a nobleman came up and addressed Mr. Rush abruptly, 'I'm going to bring a bill into Parliament, making it indictable in any stranger, whether ambassador from a republic, kingdom, or popedom, ever to leave his card without his address upon it. How do you do, Mr. Rush, how you do? I've been trying to find you everywhere. I'm Lord Erskine;

Cætera norunt
Susquehanah, Hudson, Connecticut, Mississippi.'

The monologue continued as follows: 'I had a letter for you, from my brother, the Earl of Buchan; but you made me carry it so long in my pocket that I lost it. It had no secrets, it was only to congratulate you on your arrival; he was long a correspondent and friend of your father, and wants to transfer his feelings to you, that's all; so you can write to him as if you had received it.' His lordship added, that he had always loved the United States, and hoped to visit them yet, as he was an old sailor, and cared nothing for storms.

A second notice is equally amusing.—"June 7. Lord Erskine called upon me according to promise. First he spoke of the bill he lately brought into the House of Lords, to prevent arrest in cases of libel until after indictment, regretting its loss. He touched on other topics. I pass by all to come to what he said of Burke. My boys being in the room, he asked if I had found a good school for them. I said they were at present with Mr. Foothead, in my neighbourhood. 'You are lucky,' he said, 'if Burke's recommendation goes for any thing, for he thought well of him as a teacher of the classics. What a prodigy Burke was!' he exclaimed. 'He came to see me not long before he died. I then lived on Hampstead Hill. "Come, Erskine," said he, holding out his hand, "let us forget all, I shall soon quit this stage, and wish to die in peace with every body, especially you." I reciprocated the sentiment, and we took a turn round the grounds. Suddenly he stopped. An extensive prospect broke upon him. He stood wrapt in thought, gazing on the sky as the sun was setting. "Ah, Erskine," he said, pointing towards it, "you cannot spoil that, because you cannot reach it, it would otherwise go, — yes, the firmament itself, — you and your reformers would tear it all down." I was much pleased with his friendly familiarity, and we went into the house, where kind feelings between us were further improved. A short time afterwards he wrote that attack upon the Duke of Devonshire, Fox, and myself, which flew all over England, and perhaps the United States.' All this his lordship told in the best manner. In my form of repeating it I cannot do him justice.

"Desiring to hear something of Burke's delivery from so

high a source, I asked him about it. 'It was execrable,' said he. 'I was in the House of Commons when he made his great speech on American conciliation, the greatest he ever made. He drove every body away; I wanted to go out with the rest, but was near him, and afraid to get up, so I squeezed myself down, and crawled under the benches like a dog, until I got to the door without his seeing me, rejoicing in my escape. Next day I went to the Isle of Wight. When the speech followed me there, I read it over and over again. I could hardly think of any thing else. I carried it about me, and thumbed it until it got like wadding for my gun.' Here he broke out, with a quotation from the passage beginning, 'But what,' says the financier, 'is peace without money?' which he gave with a fervour showing how he felt it. He said that he was in the House when he threw a dagger on the floor in his speech on the French Revolution, 'and it had liked to have hit my foot. It was a sad failure,' he added; 'but Burke could bear it.' He sat upwards of an hour, leaving me to regret his departure."

He walked to the last with a light tripping air, rising jauntily on the instep, and bearing himself so erect as to elicit a compliment from majesty at the farewell levee. The "old man garrulous" would cheer himself with recollections of past triumphs, and on a table at Alfred's Club-house show in what manner, and by what arts of rhetoric, he could have convicted the Queen. It was thus that he used to repeat his pleadings at Colman's dinner-table; and when the host complaisantly observed that his arguments were unanswerable, would reply, "By no means, my dear sir, 'had I been counsel for A., instead of B.: you shall hear what I would have advanced on the other side."

He fell in his latter days into the mischievous habit of taking opium, that he might overcome by artificial spirits that sinking of the heart, which the consciousness of a ruined fortune and dimmed reputation could not but occasion.

At length that release came, which his best friends would have welcomed earlier. In the autumn of the year 1823, when accompanying one of his sons to Edinburgh by sea, he was attacked with inflammation of the chest, a complaint

from which he had before suffered severely, his only illness for a space of forty years. He was in consequence set ashore at Scarborough, whence he travelled by easy stages to Scotland. The complaint, however, rapidly gained ground, and on the 17th November he died at Almondell, his late brother's seat, six or seven miles from Edinburgh, aged 73. On the 28th his remains were interred in the ancient family vault at Uphall. The funeral was private and unostentatious, the family carriages and those of a few friends following the hearse.

Lord Erskine's will is dated so far back as November 15th, 1782, and it begins in nearly these words: "Being from a sense of honour, and not from any motive of personal resentment or revenge, about to expose my life to great peril, it is a comfort to me that I have so few duties to fulfil, previous to an event which may deprive me of every other opportunity of so doing." He then proceeds to enumerate certain sums, constituting the amount of his property, which is stated to have been all acquired since his practice at the bar, and to be 9000*l.* consols, and about 1000*l.* more in bills: it is all left, with the highest expressions of confidence and affection, to his then wife, for herself and children, they to inherit it after her decease, in equal shares, as they attain twenty-one. But he provided, as on account of her youth she might probably marry again, and as such an event, though by no means deprecated by him, might be incompatible with the interests of his children, that, upon such second marriage, the property should be transferred to his sister, Lady Anne Erskine, in trust, as above mentioned.

There is a codicil, dated Carleton Hotel, Pall Mall, October 2d, 1786, to confirm his will, his property since its execution having greatly accumulated, and for giving children since born, and future children, an equal participation. From their remote date it is not surprising that these papers are somewhat defaced and mutilated, and it is remarkable that such a lapse of time, and change of circumstances, should not have induced a lawyer like Erskine to leave a more recent declaration.

By his first marriage, 29th March, 1770, with Frances, daughter of Daniel Moore, Esq., Lord Erskine had eight

children: Frances, married to the Rev. Dr. Holland, Prebendary of Chichester; David Montague, the present Lord; Henry David, a clergyman; Thomas, lately one of the judges of the Common Pleas; one daughter, Margaret, unmarried, who survived him; also Mary, married in November to Edward Morris, Esq., the Master in Chancery, who died in 1815. Two of his children, Elizabeth, who married in 1798, and died within two years after her marriage, and Lieutenant-Colonel Esmé Stewart, died in his lifetime. This brave young officer, treading in his father's steps, had married at the early age of sixteen, and was on the Duke of Wellington's staff at Waterloo. Towards the close of the day a cannon shot struck him from his horse, shattered his left arm, and carried off two of the fingers of his right. As he lay bleeding on the ground, the Prussian musketry was heard at a distance. With heroic ardour, forgetting his wounds, he seized his hat, and waived it cheeringly in triumph. The Duke of Wellington, who stood beside him, desired that the gallant youngster might be carried to his tent and immediately taken care of. He was speeedily recommended for the rank of Major, and a year afterwards gazetted Lieutenant-Colonel and Adjutant-General in Ceylon. Consumptive symptoms, arising from his wounds, increased upon him during the winter, and he died on the passage to India, the worthy scion of a noble stock.

Of Lord Erskine's brothers, almost equally celebrated with himself, Sir Walter Scott has written an interesting notice in his Diary, from personal knowledge.

"April 20. 1829.—Lord Buchan is dead, a person whose immense vanity, bordering upon insanity, obscured or rather eclipsed very considerable talents. His imagination was so fertile that he seemed really to believe the extraordinary fictions, which he delighted in telling. His economy, most laudable in the early part of his life, when it enabled him from a small income to pay his father's debts, became a miserable habit, and led him to do mean things. He had a desire to be a great man, and a Mæcenas—à bon marché. The two celebrated lawyers, his brothers, were not more gifted by nature than, I think, he was; but the restraints of a profes-

sion kept the eccentricity of the family in order. Henry Erskine was the best-natured man I ever knew, thoroughly a gentleman, and with but one fault. He could not say 'no,' and thus sometimes misled those who trusted him. Tom Erskine was positively mad. I have heard him tell a cock-and-a-bull story of having seen the ghost of his father's servant, John Burnett, with as much gravity as if he believed every word he was saying. Both Henry and Thomas were saving men, yet both died very poor; the latter at one time possessed 200,000*l.*, the other had a considerable fortune. The earl alone has died wealthy. It is saving, not getting, that is the mother of riches. They all had wit. The earl's was crack-brained, and sometimes caustic. Henry's was of the very kindest, best-humoured, and gayest sort that ever cheered society; that of Lord Erskine moody and muddish. But I never saw him in his best days."

Misfortune had sharpened the tone of Sir Walter's observations at this period, or he would have noted down, we may readily believe, with more good nature, the characteristics of this remarkable family. His last notice, though mournful, is not a whit more flattering.

"April 25th, 1829. Time to set out for Lord Buchan's funeral, at Dryburgh Abbey. His lordship's burial took place in a chapel amongst the ruins. His body was in the grave with its feet pointing westwards. My cousin Maxpopple was for taking notice of it, but I assured him that a man who had been wrong in the head all his life, would scarce become right-headed after death. I felt something at parting with this old man, though but a trumpery body. He gave me the first approbation I ever obtained from a stranger."

There is a well-known story of the late Duchess of Gordon, expressing an opinion not more favourable of the poor earl. He had been enlarging on a pleasant theme, the abilities of his family, but was brought to a full stop by an interruption from her Grace: "My lord, I have always heard that the wit came by the mother's side, and was settled on the younger children."

The humour of the slighted eldest brother are delineated

with such unsuspecting truth by himself, in his own egotistical letters, and, but for a slight outline of caricature, describe so faithfully the traits of the more fortunate Chancellor — his vanity, sensitiveness, and yearnings after distinction, that no one who loves to contemplate the finer shades of character, or to examine attentively the minute resemblances of a likeness, will blame his biographer for giving a few extracts.

Lord Buchan, according to his own report for a new edition of the Scottish peerage, "was educated by James Buchanan of the family of the memorable poet and historian, under the immediate direction of his excellent parents. He was founded in the elements of the mathematics by his mother, who was a scholar of the great Maclaurin, by his father in history and politics, and by his preceptor in all manner of useful learning, and in the habits of rigid honour and virtue."

Proud and poor, subsisting barely on his patrimonial pittance of 150*l.* a year, the Scottish earl could not forget the consciousness of royal blood, and refused to accept the post of secretary to an embassy at Lisbon, which Lord Chatham, his fellow-student at Leyden, had procured, because the ambassador, Sir James Gray, was a person of inferior rank. Though actually gazetted, he refused to proceed; and, strange to say, was commended for his refusal by Dr. Johnson, who, in a spirit of contention or egregious folly, declared that, had he gone, he would have been a traitor to his rank and family. Men of the proudest race and highest title, the Courtenays and Howards, are wiser now, and think it no degradation to enter into the junior ranks of the military, naval, and diplomatic professions.

The high-minded earl soon after withdrew from that public life, for which such feudal notions of inherited grandeur unfitted him. It is curious to read in his correspondence with Lord Chatham the mention which he makes of the future Chancellor, and to think of the difference which afterwards took place in their relative positions:

"A brother of mine (Thomas Erskine) is just arrived from our colonies of East and West Florida, and gives me but a very unfavourable account of the capabilities of those countries. He brought me likewise a curious account of a

negro conqueror, who has subdued a great part of Africa lying nearer our settlements, and has occasioned the building of our new fort on that coast. He carries eight Arabic secretaries, who record his feats in that language. My brother has also conversed with Commodore Byron's officers, and confirms the account of the Patagonian giants."

Having pitched his tent in the "gude auld toune" of Edinburgh, the Earl of Buchan essayed to become a Mæcenas of literature, and founded a Society of Antiquaries, drawing up for their edification a correct life of the admirable Crichton, in which, as the preface assures us, many "falsities relating to this prodigy of human nature, are detailed." The fond author might vainly hope to insinuate a comparison between the merits of the great original and his own. But the pearl was cast before an avaricious race, who only cared for paper as a medium of currency, and the discontented earl thus loudly vented his indignation to a literary friend:

"The illiberal opposition made to the charter of our society by the College of Edinburgh, the Faculty of Advocates, and the society calling itself the Philosophical, prove very glaringly, that it is no easy matter to copy the institutions of more polished nations in a country where a sordid monopolising spirit, engrafted on the remains of ancient barbarity, checks the progress of every thing that can tend to take the people out of their trammels. You will see from the caveats and answers of our society, how ungenerously I have been requited by my countrymen for endeavouring to make them happier and more respectable. This is the common lot of men who have a spirit above that of the age and country in which they act, and I appeal to posterity for my vindication. I could have passed my time much more agreeably among Englishmen, whose character I preferred to that of my own countrymen, in a charming country too, where my alliance with the noblest and best families in it, and my political sentiments, would have added much to my domestic as well as civil enjoyments; but I choose rather to forego my own happiness for the improvement of my native country, and expect hereafter that the children of those who have not known me, or received me as they ought to have done, will express their

concern, and blush on account of the conduct of their parents. 'Præclarâ conscientiâ igitur sustentor, cùm cogito me de republicâ aut meruisse quum potuerim, aut certe nunquam nisi divinè cogitâsse.' "

Though the retired earl could apply to himself the pompous eulogy of the Roman orator, he appears to have been imbued with less political courage than a Roman, and to have sometimes despaired of the commonwealth. Communicating to Mr. Nicholls the following year, December, 1784, "Remarks on the Progress of the Roman Army in Scotland during the sixth Campaign of Agricola," he thus querulously imparted his political griefs:

"Sir,

"Next to the united loss of health and character, accompanied by the gnawing torments of an evil conscience, is the misfortune to a good man of surviving the virtue, glory, and happiness of his native country. This misfortune is ours; and such has been the accumulation of disgrace and discomfiture that has fallen on us as a people since the last wretched twenty-four years of the British annals, that I turn with aversion from the filthy picture that is before my eyes, and look for consolation to the times that are past. It was in seeking, sir, for such opiates to the watchful care of a good citizen in a falling empire, that I fell into antiquarian research, and shall give you from time to time the results of it."

Overwhelmed with political dislikes and want of sympathy in his literary tastes, Lord Buchan shook off the dust from his feet on Edinburgh, and sought a more congenial abode at Dryburgh Abbey, not omitting to address the literati of Europe on the occasion in a circular Latin epistle. In improving the natural charms of this lonely retreat, the worthy peer found a healthy recreation; and, whilst pursuing statistical inquiries through the parish, gained an excellent excuse for self-adulation and easy authorship:

"It is amazing," he writes, "the effect a pioneering genius has in exciting the curiosity of mankind to explore new paths and unbeaten regions. My insatiable thirst of knowledge, and a genius prone to splendid sciences and the fine arts, has distracted my attention so much, that the candid must make

ample allowances for me in any one department; but, considering myself as a nobleman, and not a peer of Parliament, —a piece of ornamental china, as it were, I have been obliged to avail myself of my situation to do as much good as I possibly could, without acting in a professional line, which my rank and my fate excluded me from. A discarded courtier, with a little estate, does not find it easy to make his voice be heard in any country, and least of all in Scotland."

On occasions which called forth his patriotism, however, the earl would make his voice heard across the Atlantic, and bestow tokens of his high approbation. In 1792, he sent to Washington a snuff-box made of the oak that afforded shelter to Wallace after the battle of Falkirk, and gained as excellent a return as in the old exchange between Glaucus and Diomed. The gallant American forwarded his portrait in requital, and with the gift sent a grateful acknowledgment of the earl's tribute. "I accept," he writes, "with sensibility and satisfaction, the significant present of the box which accompanied your lordship's letter."

Lord Buchan appears to have successfully studied dramatic effect. He is said to have identified himself so completely with his predecessors that he always spoke of their actions as if actually his own, and a stranger not aware of this habit was amazed once, though his lordship did look extremely old, to hear him say at a dinner-table, "I remonstrated strongly before it took place against the execution of Charles I."

With the true ardour of a Scottish patriot, the descendant of the black knight of Lorn, dedicated on 22d September, 1814, being the anniversary of the victory obtained by the brave Sir William Wallace at Sterling Bridge in 1297, the colossal statue of that hero, 21½ feet high, on a rock at Dryburgh, in the following very laconic and impressive manner— "In the name of my brave and worthy country, I dedicate this monument as sacred to the memory of Wallace:

"The peerless knight of Ellerslie,
Who woo'd on Ayr's romantic shore
The beaming torch of liberty;

And roaming round from sea to sea,
From glade obscure, or gloomy rock,
His bold compatriots called to free
The realm from Edward's iron yoke."*

Diversified with these innocent amusements, the useful, but secluded, life of the Earl of Buchan wore on calmly to an extreme old age; and, though his vanity may provoke a passing smile, the active encouragement which he gave to literature should command our indulgence for a failing which "leaned to virtue's side." His love of letters adds brightness to his coronet. Unable from limited means to give pecuniary aid, he would still by the exercise of kind offices, recommendations, introductions, or suggestions, promote the cause of youthful, lowly, and unfriended aspirants to fame. He thus assisted Burns, Tytler, and Pinkerton in their early struggles; and, as an incentive to the study of the classics, founded an annual prize in the university of Aberdeen. It must be confessed that the premium is classically minute in value, and founded on those gifts of parsley and laurel, with which the victors at the Olympic games were rewarded.

Of his brother, the Honourable Henry Erskine, for forty years the gifted leader of the Scottish bar, the Whig advocate of witty and benevolent memory, who can think or write without feelings of respectful admiration almost verging on idolatry? Were there ten Harry Erskines in the world, the cynic would burn his books! The just appreciation of his virtues extended far beyond the circle of his friends. A writer in the west of Scotland, representing to a needy *tacksman* the futility of entering into a law-suit with a wealthy neighbour, received the ready answer, "We dinna ken what ye say, maister; there's nae a puir man in Scotland need want a friend, or fear an enemy, whilst Harry Erskine lives." Remarkably handsome in face and person, taller than his brothers, and of graceful demeanor, the dean of the faculty of advocates was said by Lord Jeffrey, who knew and loved him, to have no rival in brilliancy of wit, charming facility of eloquence, and the constant radiance of gay good humour,

* Nicholls's Literary Anecdotes.

which enriched his manner in debate. "Inflexibly steady to his principles, yet invariably gentle and urbane in his manner of asserting them," the leader of opposition in Scotland was spoken off by all — even the staunchest Tories -- with a feeling of personal kindness. Though disappointed in the hope of reviving the chancellor of Scotland in his own person, and baffled in his attempts at obtaining those professional honours to which none had so high a claim, not the slightest shade of discontent appeared to rest upon his mind, no drop of bitterness mingled with his blood. The idol of society, he used without abusing its pleasures; strictly moral and abstemious, he had no taste for expensive dissipations, and found, where he sought enjoyment, chiefly at home. He withdrew from the profession in 1812, to the elegant retirement of a country life, and was full to the last, though suffering from an incurable malady, of that festive gaiety of heart and sympathy with innocent enjoyments, which made him the playfellow of the young.

Horner tells his sister, in September 1812, of "a visit to Henry Erskine, who has retired from the bar, and is living among the plantations he has been making for the last twenty years, in the midst of all the bustle of business: he has the banks of the river Almond for about four miles: he told me he had thrown away the law like a dirty clout, and had forgotten it altogether. It is delightful to see the same high spirits, which made him such a favourite in the world while he was in the career of ambition and prosperity, still attending him, after all the disappointments that would have chagrined another man to death. Such a temper is worth all that the most successful ambition could ever bestow." *

Happily for this amiable and highly gifted man, he found in his wife, a sister of Sir Thomas Monroe, one of like tastes and almost equal genius with himself, who could appreciate his excellence, and enhance his joys. In extreme age, she could still deserve the praise of a clever friend and acute observer: "Except Mrs. Dunlop, Burns's patroness, and Mrs. Henry Erskine, married to the late lord advocate, I do not find a

* Horner's Memoirs.

creature who has oil enough in the lamp of enthusiasm to burn on to advanced life."*

The oratory of this fascinating pleader, less diffusive than Lord Erskine's, was relieved by those ready jests and touches of humour, which not even Scottish gravity or (the climax) Scottish judicial gravity could resist. The mirthful glee extended itself to the ermined sages, who found too much amusement in the scene to check the merry actor.

Opening the case of some venerable spinster with an unlucky name, he thus quietly inverted the order — "Maclean and Donald the defendants; Tickle the plaintiff, my lord." The titter of the court was raised to a shout by the grave chief good-humouredly retorting, "Tickle her yourself, Harry; you can do it as well as I."

His quick retort to Dundas — who offered to lend him his lord advocate's gown, as he would not want it long — that "he would not assume the abandoned habits of his predecessors" is one of the many good things he had always ready. The joke of scribbling *tu doces* on a tea-caddy is also attributed to him, but has since had many sponsors. Upon the expulsion of the Whigs from office in 1807, for urging the Roman Catholic claims, the evicted lord advocate condoled with the Duchess of Gordon upon the death of her son, saying it was much to be lamented that poor Lord George did not live in these times, he would have stood such an excellent chance of being in the cabinet, instead of in Newgate!

Having succeeded in a cause in which his clients, a large coal company, were greatly interested, they invited him to a grand dinner, to celebrate their good fortune. The chairman having called on Erskine for a toast, he gave them the following appropriate sentiment: "Sink your pits — blast your mines — dam your rivers!"

He would not disdain a pun, either in verse or prose, and struck off epigrams in court with all the readiness of his brother. The following is scarcely a fair specimen: —

"On that high bench where Kenyon holds his seat,
England may boast that Truth and Justice meet;

* Life of Mrs. Grant of Laggan.

But in a northern court, where Pride commands the chair,
Oppression holds the scales, and judgment's lost in Ayr."

On reading Moore's Anacreon he improvised —

"Oh, mourn not for Anacreon dead;
Oh, weep not for Anacreon fled;
The lyre still breathes he touched before,
For we have one Anacreon Moore."

With all his gaiety, Henry Erskine was unaffectedly religious, and lived in strict accordance to his faith. A strong devotional feeling distinguished the three brothers, tinged in Lord Buchan by an addiction to Methodism, and in Lord Erskine by a tendency to superstition. The following is the ghost story scouted by Sir Walter Scott, which the chancellor told, in a large company, to the Duchess of Gordon, and which proves either his credulity, or love of mystification:

"I also," said Lord Erskine, after one of her grace's marvellous anecdotes, "believe in second sight, because I have been its subject. When I was a very young man, I had been for some time absent from Scotland. On the morning of my arrival in Edinburgh, as I was descending the steps of a close, on coming out from a bookseller's shop, I met our old family butler. He looked greatly changed, pale, wan, and shadowy as a ghost. 'Eh! old boy,' I said, 'what brings you here?' He replied, 'To meet your honour, and solicit your interference with my lord, to recover a sum due to me, which the steward at our last settlement did not pay.' Struck by his looks and manner, I bade him follow me to the bookseller's, and into whose shop I stepped back; but when I turned round to him, he had vanished. I remembered that his wife carried on some little trade in the old town; I remembered even the house and flat she occupied, which I had often visited in my boyhood. Having made it out, I found the old woman in widow's mourning. Her husband had been dead for some months, and had told her, on his death-bed, that my father's steward had wronged him of some money; but that when Master Tom returned he would see her righted. This I promised to do, and shortly after fulfilled my promise.

The impression was indelible; and I am extremely cautious how I deny the possibility of such 'supernatural visitings' as those, which your grace has just instanced in your own family."

A concentrated spirit of devotion was inherited in the Erskine family. Their great-grandfather was a Presbyterian sufferer in the days of Charles II. The names of Ralph and Ebenezer Erskine have received a stamp of especial reverence in what is called *par excellence* the religious world. Erskine's aunt, Lady Frances, was the wife of that brave and pious soldier Colonel James Gardner. His sister, Lady Anne Agnes, of whom Erskine is reported to have said, that he considered it his highest honour to have such a woman for his sister, was appointed treasurer of Lady Huntingdon's charities, and continued to superintend her chapel after her decease. At this chapel their father, towards the close of life, was a regular attendant. The solemn service which took place at Bath on his death, and produced a great sensation there, was of a character to make a deep impression on the mind of the future chancellor. "All hath been awful," writes Whitefield in his strange but striking language, "and more than awful. On Saturday evening, before the corpse was taken from Buchan House, a word of exhortation was given, and a hymn sung in the room where the corpse lay. The young earl with his hand on the head of the coffin, the countess dowager on his right, Lady Anne and Lady Isabella on his left, and their brother Thomas next to their mother, with a few friends. On Sunday morning, all attending in mourning at early sacrament, they were seated by themselves at the foot of the corpse, and with their servants received first, and a particular address was made to them."*

At eleven public service began, and Whitefield preached a funeral sermon. "The coffin being placed within a place railed in for the purpose, the bereaved relations sat in order within, and their domestics outside the rail. Three hundred tickets of admission, signed by the present earl, were given to the nobility and gentry. Ever since there hath been public

* Lady Huntingdon's Memoirs.

service and preaching twice a day. This is to be continued till Friday morning, then all is to be removed to Bristol in order to be shipped for Scotland."

The inscription on the Earl of Buchan's coffin runs thus:—

"His life was honourable—His death blessed;
He sought earnestly peace with God;
He found it
Alone in the merits of our Saviour."

On the head-stone of his son must be graven the confession that he was a sincere Christian, too easily led away by temptation. The votive urn of friendship will record the social merits of the festive companion, ready patron, thorough gentleman,—full of generous impulses and honourable feelings, on whose genial character not a shade of pride, or envy, or malice could rest, and in whose courtesy to all ranks of the profession there was no alloy. Rightly do the bar adore his memory, for generations of lawyers may pass away ere they see his like again. The statue raised to his honour in Lincoln's Inn Hall, the bust dedicated in Holland House, with a just inscription, "nostræ eloquentiæ facile princeps," will sooner perish than the tradition of their fondness, and of his supremacy. But more enduring still, and lasting as the language in which they are printed, will be the monuments of his eloquence and relics of his power as an advocate. Long as the trial by jury shall exist, will the spells of the great magician be studied with care and admiration, but with little hope of rivalry, for his wand is broken, and its fragments lie scattered on his grave. Jurors might say to Erskine, as his admirers said to Sir Philip Sydney, "we listen, it is true, to others, but we give up our hearts to thee."

CHAPTER IV.

THE LIFE OF LORD REDESDALE.

THE ancestry of this excellent lawyer may be traced further back in the annals of Northumberland than even to Sir John de Mitford, at the time of the Conquest. There was an old writing produced at a trial at Durham, by which one of the Mitfords, in the time of Edward the Confessor, did assure his wife's jointure out of lands in Mitford. From a pedigree furnished by the late lord to the Rev. J. Hodgson, it appears that Sir John de Mitford, knight, a descendant of this warrior, was a person of very considerable note in his time, and frequently returned to parliament as representative of the Commons in the reigns of Edward the Third, Richard the Second, and Henry the Fourth. His name occurs in forty different writs and commissions, empowering him to act in matters of a civil or diplomatic nature between England and Scotland. When Henry the Fourth, A. D. 1400, required several prelates, earls, barons, knights, and esquires, from different northern counties, to attend him and his council, on the morrow of the Assumption; the persons summoned for Northumberland were Monsieur Henry de Percy, John Mitford, and four others. In 1396, Sir John Scrope granted to this knight the keeping of his castle, under the style of Lord of Mitford; and by another instrument, for his good council and advice, gave him 100 shillings a year out of the lands for his life.

From him in direct descent was Robert Mitford, who represented the neighbouring borough of Morpeth in the Convention Parliament, and for his services there received from Charles the Second a grant of the site of the castle of Mitford, which then belonged to the Crown, and which, together with the other Mitford estates, is still in the possession of Captain Mitford, R. N., the representative of the elder

branch of the family. John, the second son of the above-mentioned Robert, settled as a merchant in London.

Descended from such a long line of ancestors, his grandson John Mitford, the father of the late peer, had been called to the bar, but retired early to the duties and pleasures of a country life, and lived in elegant privacy at Exbury Park, in the county of Hants. By his marriage with Philadelphia, daughter of Willey Reveley, Esq., of Newby Wiske, County of York, and first cousin to Hugh Duke of Northumberland, he had two sons — William, author of the well known History of Greece, and John, the subject of this memoir.

John Mitford was born in London, in a then fashionable part of the metropolis, the parish of St. Andrew, Holborn, on the 18th August, 1748 (o. s.). It has been frequently but erroneously stated that he was educated at Winchester and New College, Oxford. Both he and his brother the historian were brought up at a school at Cheam, under the Reverend Mr. Gilpin, well known as the author of several tours and other works on picturesque scenery. For their old tutor the brothers entertained a sincere and lasting regard, and in after life Colonel Mitford had the pleasure of presenting him to the living of Boldre, in the New Forest, at that time in the gift of the family. Academical distinctions were then rarely sought; the members of some aristocratic college deemed themselves fortunate in being admitted to degrees without any preliminary examination, and cared not to awaken echoes of fame in their silent halls. So great was the apathy which prevailed, that William Mitford, the elegant Greek scholar, who commenced his brilliant literary career by writing a work on the theory of languages, quitted Magdalen College, Oxford, without taking a degree, and the colonel of his regiment of militia, whom he afterwards succeeded, the illustrious Gibbon, was compelled to rusticate from the same college for errors, into which an inquiring mind and utter idleness had betrayed him.

Instead of entering either university, Mr. Mitford became a clerk in the Six Clerks' Office, by a singular coincidence commencing his Chancery practice, in the same officina bre-

vium, as his celebrated competitor for equity renown, Sir Samuel Romilly. Fortunately for the interests of literature, and a younger brother's fame, Mr. William Mitford, the eldest son (he was senior by four or five years), who had been called to the bar, felt too much distaste for the drudgery of the profession to struggle against his private inclinations, especially as his father's death in 1761 had made him completely independent. He found too exquisite delight, to quote his own elegant lines, in the stillness of his father's seat, and the finely wooded banks of the Font, to linger amid the *opes strepitusque* of term and Westminster Hall.

> " Duc me ubi Fons oriens tortis se erroribus ornat,
> Quâ nectit querulam lugubris unda moram."

To a brief memoir of his brother Lord Redesdale has added the following curious note: " It was said by the Lord Chancellor Hardwicke, that scarcely any person amongst his early acquaintance had persevered in the study of the law, who had competent means of support without the profits of the bar, and the author's father and his mother's brother and father, all educated for and called to the bar, having quitted the profession when they respectively succeeded to moderate paternal estates, he thought himself justified by their example in leaving the bar to his younger brother, whom necessity compelled to persevere."

Stimulated by this sharp spur, Mr. Mitford entered himself at the Inner Temple, and soon cleared all the obstacles of his profession. The talisman of success in his day was writing a book; even an indifferent work insured some degree of attention to the author, whilst an able treatise was the sure preface to fame and fortune. The path has since been trodden too indiscriminately to offer the same advantages; but this, the scholar's method, may still be commended in preference to most of those now in fashion.

In his treatise on the Court of Chancery, Mr. Mitford has drawn, in an enlarged analytical manner, a rational system of that branch of the practice of the courts, illustrated and supported throughout by references to the authorities of rules, orders, and determinations of preceding judges. " His book,"

said Lord Eldon, "is a wonderful effort to collect what is to be deduced from authorities speaking so little what is clear, that the surprise is, not at the difficulty of understanding all he said, but that so much can be understood!"

Professor Story also, in his Preface to Commentaries on Equity Pleading, says of this work: "The structure of every treatise on the subject of equity pleadings must be essentially founded on Mr. Mitford's admirable work on pleadings in the Court of Chancery. That treatise has been well described by Lord Eldon. Sir Thomas Plumer, in his masterly judgment in a cause of great celebrity, has also said (Cholmondeley *v.* Clinton, 2 Jac. & W. 151.): 'To no authority, living or dead, could reference be had with more propriety for correct information respecting the principles by which courts of equity are governed, than to one whose knowledge and experience have enabled him, fifty years ago, to reduce the whole subject to a system with such universally acknowledged learning, accuracy, and discrimination, as to have been ever since received by the whole profession as an authoritative standard and guide.

'Viventi tibi præsentes largimur honores.'

The learned judge and the noble author have, since that sentence was pronounced, both passed to the grave; and we, who survive, feel the truth and value of this tribute, with all the affectionate reverence which belongs to posthumous praise. Never could the voice of praise come to an author with a higher grace than from the lips of such eminent men. It is the privileged case, 'Laudari a viris laudatis.' I have transferred into my own pages all the most valuable materials of Mr. Mitford's treatise, and generally, where I could, in his own language, which I have not the presumption to think I could improve."

This was written in 1838. The grave has since closed on the estimable Professor also; but, like the subject of this eulogy, his lucubrations will live.

The success of this excellent work—still, at this long interval of time, the best and safest guide through the meanders of chancery practice—was so complete, that, on a second

edition being demanded in a few years by the profession, the author found himself compelled to apologise for its mistakes, by the excuse of pressure of professional business. In company with Mr. Scott, whose steps he assiduously followed, always a pace or two behind, Mr. Mitford obtained the lead in chancery business, acquired the reputation of a thorough draftsman, and was supposed to decide in chambers on more cases of private property than any man at the bar.

It was then the custom for chancery men to go the circuit, and Mr. Mitford selected the western, which he travelled with Jekyll, Dallas, and Pitt; but could not boast of a much fuller bag than the future premier. At Pitt's instance an annual dinner took place for some years at Greenwich, the guests consisting of Erskine, Redesdale, Grant, Jekyll, Dallas, and others; a pleasant party, continued even when political excitement had caused the members to be widely estranged from each other in opinion, and would scarcely suffer them to meet, except on these annual occasions, at the same table. These festive meetings were continued, however, during the whole time of Lord Redesdale's absence in Ireland (a time of active and bitter political feeling). The regard which the whole party entertained for the absent Chancellor during that period, was evinced in each successive year by their sending an address to him from Greenwich, generally written by Jekyll, and signed by all who attended the dinner. He was endeared to them by his good humour and high gentlemanly feeling, and respected for his fund of information.

To advance his legal and political interests, Mr. Mitford was, in 1788, through the patronage of a relative, the Duke of Northumberland, introduced into Parliament as member for the duke's close borough of Beeralston. His voice and vote were steadily given to ministers; but, though he spoke on several questions of interest with knowledge and good sense, his oratory does not appear to have been sufficiently distinguished to deserve more than a passing mention. He contended stoutly, in company with a serried corps of lawyers, that the impeachment of Warren Hastings had abated by the dissolution of Parliament. The phalanxes of law and

eloquence were opposed to each other in martial array; but, as in the combat of Homer's deities, the cause of wisdom prevailed. On the one side Sir Archibald Macdonald, Sir John Scott, Mitford, Erskine and Hardinge; on the other, names familiar as household words and overwhelming in combination, Pitt, Fox, Sheridan, Burke, Grey, Windham, Dundas, and Grenville. The best apology that could be urged for Mitford's side of the question was made by the king, who said, that when Pitt and Fox took the same view of any subject and voted together, they were sure to be in the wrong.

Mr. Mitford also supported Warren Hastings in his petition against the violent language of Burke, and said pointedly, that, if the late chief governor was guilty, he wished him to fall by the oppression of his crimes, and not by the weight of his accusers.

The first legislative measure which Mr. Mitford introduced, was a bill to relieve, upon conditions and under restrictions, persons called Protesting Catholic Dissenters, from certain penalties and disabilities, to which papists, or persons professing the popish religion, are by law subject. "It was well known," he said, "there was great severity in the laws then subsisting, against persons professing the Roman Catholic religion, but the extent of that severity was not equally known. In a book which was in almost every gentleman's hands, he meant Burn's Ecclesiastical Law, no less than seventy pages were occupied with an enumeration of the penal statutes still in force against Roman Catholics, and extracts from most of those statutes were also to be seen in Burn's Justice. The present reign was the only one (the short reign of James II. excepted) since the reign of Elizabeth, in which some additional severity against Roman Catholics had not been put upon the statute book, and many of the most severe of those acts were in an especial manner directed against the Roman Catholic clergy. He enumerated a variety of these statutes to show that papist priests were guilty of high treason, and would suffer death for offences in their nature trivial, such as persuading others to be of the Roman Catholic religion."

His humane motion—the feeble glimmering of a glorious dawn—was seconded by Windham, but opposed by Fox,—not in regard to what the bill did, but what it did not, for it by no means went far enough. The Attorney-General thought the measure not sufficiently comprehensive, and practically useless, the Roman Catholics at that moment walked the streets of London in as perfect security as any other description of subjects whatsoever, and no person dreamt of molesting them. Mr. Mitford, however, only meant his relief to apply to that body of respectable Roman Catholics who had protested solemnly against those evil opinions, which the language of the laws imputed to them. There was no real, though seeming, inconsistency in this unrelenting opponent of the Roman Catholic claims originating a partial measure for their relief, as he drew a marked distinction between toleration and encouragement, between immunity in faith and the grant of civil privileges, between protection and power.

Mr. Mitford's high reputation in Chancery, and his consideration in the House of Commons, led him by gentle gradations into offices of trust and emolument. Of the grandeur of one of these appointments a glimpse has lately been revealed to us in the diary of Sir Samuel Romilly: "The Bishop of Durham appointed Eldon, and afterwards Redesdale, chancellor of Durham. There were not upon an average more than four or five causes in the year, owing to the narrow extent of the Court's jurisdiction; the emolument inconsiderable. Grandeur and homage attend the chancellor. The castle of Durham, the episcopal palace, is given up to him. Invitations to the banquet are sent in his name; he presides. In the midst of bows and compliments, and by numerous attendants, we were conducted through long lighted galleries into a drawing-room, where some of the officers of the court and their wives were waiting to receive us, and 'My Lord' and 'Your Honour' ushered in every phrase that was uttered. So sudden a transition into a great man, and the lord of an old feudal palace, reminded one of Sancho's government of Barataria, and still more of Sly, the drunken cobbler of Shakspeare."

Mr. Mitford was also appointed a judge for three of the counties in South Wales, and made the circuit for a year or so to deliver empty gaols, and dispose of such stray causes as could be caught. These Welch judges had sufficient leisure to be great sticklers for their dignity, of which Edgeworth gives an amusing example: "My grandfather, the Welch judge, travelling over the sands at Beaumaris, as he was going circuit, was overtaken by the night and by the tide: his coach was set fast in a quicksand; the water soon rose into the coach, and his registrar and some other attendants crept out of the windows and climbed to the roof. The judge let the water rise to his very lips, and with becoming gravity replied to all the earnest entreaties of his attendants: 'I will follow your counsel if you can quote any precedent for a judge's mounting a coach-box.'"

But for a lawyer of conservative politics, so able, and so connected, higher duties were in reserve. On Sir John Scott's being appointed Attorney-General, in 1792, Mr. Mitford, as the next eminent chancery barrister, was selected for the office of Solicitor-General; an unfortunate choice in the judgment of many, on account of the numerous state trials which were then impending, and for the conduct of which chancery lawyers, from their comparative inexperience in points of evidence and trials at nisi prius, could not be fully competent. When the Crown had failed in the first two prosecutions, the third, against Thelwall, was confided to Serjeant Adair, whom practice had better qualified to address a jury; and a strong opinion prevailed amongst the supporters of government, that, if he had led in the first case, the verdict might have been different, but that even the serjeant's great tact and experience could not stem the tide, when oppressed with the weight of two verdicts.* There is great doubt, however, whether any abilities could have brought the guilt of the prisoners within the statute of treason, or misled the common sense of a jury to interpret the words "levy war against the king" in a technical and figurative sense, different from the plain and obvious one. The

* Law Monthly Magazine.

minds of the crown lawyers, by long habits of artificial reasoning, had been

> "Held in the magic chain
> Of words and forms and definitions void."

Startled at the intelligence that the Jacobin club, with its 44,000 affiliated popular societies, had for a great length of time really governed France, and uneasy at the proceedings of secret corresponding societies, which aimed, as they thought, at democracy, their subtle intellects became entangled, as it were, in a curiously spun network of legal enthymemes, through the intricacies of which they wrought out an elaborate conclusion, a lawyer's sorites — that to establish a convention was to subvert the constitution — that to subvert the constitution was to depose the king — that to depose the king was to attempt his life. "I confess," said the ingenious Solicitor General, "I should have been astonished to hear this doubted, if, in the present age, I could be astonished at any thing, but it is the temper of the times to hold out to the world that every thing which has been revered for ages, is now no longer to be revered, that the reason of man is become more powerful than it was in former times, and upon every subject new lights are to break in on his mind; he is to be a new creature, no longer to be governed by the wisdom of former times, but to proceed entirely upon the theory of his own conceptions."

Notwithstanding this energetic protest, the majority of lawyers cannot refrain from thinking, now that the period of alarm has long past, that the opposition, which then triumphed over his doctrines of constructive treason, was a recurrence to, rather than a departure from, the wisdom of former times; that the defence of Hardy and Tooke, and the other demagogues, as clearly guilty of sedition as they stopped short of treason, was a victory of sound principle and plain reason, over strained interpretations and dangerous precedents. Luders, an excellent lawyer, has commented with sarcastic pleasantry on the arguments of the Solicitor-General: "There is a case in common practice, which furnishes a very pointed example of the taking the laws and reformation out

of the hands of the Crown, by numbers and open force, which has never yet received the imputation of levying war against the king, though answering the description of the criminal law, as established by the cases. It used to be frequently practised within sight of the king's palace to the disturbance of his royal residence. How often have two hundred or three hundred persons been assembled in St. James's Park, for the purpose of ducking a pickpocket in the canal, before it was enclosed, which they accomplished in defiance of authority? What defence could be made to an indictment for high treason, if the case of Dammarée is to stand? The prisoner must rely on the illegal good sense of the jury for his acquittal. How dangerous is it, says Sir Matthew Hale, by construction and analogy to make treason where the letter of the law has not done it! For such a method admits of no limits or bounds; but runs as far, and as wide, as the wit and invention of accusers and the detestation of persons accused will carry men."

When a war, like that of the Sheffield cutlers, was trumped up against the Earl of Strafford, he exclaimed, "these are wonderful wars!" If we have no greater wars than such as four men are able to raise, by the grace of God we shall not sleep very unquietly! There was more danger certainly in the sittings of the convention; but the clauses of the statute of Edward, on which the ringleaders were indicted, did not in plain and express terms meet their crime, and the law of England would not allow that men should be made traitors by implication. It is well known that, even after the verdicts, the Solicitor-General was fully satisfied of the legal guilt of the prisoners in its whole extent having been completely proved; and, much as we may differ from his conclusions, we cannot fail to admire his dexterity of reasoning and acuteness.

One passage in his speech against Horne Tooke, when contrasting his loyalty of tone at one time, with his jacobinical aspirations at another, excited much applause. The real character of the man was unveiled after his acquittal, when, on hearing of the mutiny at the Nore, he exclaimed,

triumphantly, "The Revolution then is begun: stop it who can."

"Men, however, frequently profess that which they do not believe. A man may have monarchy on his lips, when his heart is far from it. Lord Lovat, for instance, was perpetually protesting his loyalty, whilst he was engaged for a course of years in a deep scheme to overturn the government to which he professed and avowed such attachment. The language of the French Assembly in 1791 was noticed by Mr. Paine, Mr. Barlow, and others of their eulogists, whose works were admired by the prisoner at the bar. Several of the members of that assembly spoke with the greatest reverence of the constitution until the time arrived when they thought they could overturn it: and there has been a memorable instance that the greatest of traitors may pretend attachment in the moment of the deepest treason. Members know that the vilest traitor professed his loyalty whilst he was contemplating an act of the meanest treachery, and in the completion of that act cried, 'Hail, master, and kissed him.'"

The conclusion of the Solicitor-General's speech was effective from its very simplicity.

"And now, gentlemen of the jury, I have nothing more to offer. I have discharged, God knows with much pain, the harsh duty imposed upon me. You will now do yours. If your verdict shall discharge the prisoner, I know you will give it with joy; if the contrary, yet it must be given. The cup, although it may be bitter, must not pass away from you. I have had a duty to perform beyond my strength and my ability, but I have discharged it faithfully and satisfactorily to my conscience."

As Sir John resumed his seat, the tear was seen to roll down his cheek. His sensibility and readiness to shed tears on slight occasions — a weakness to which even the hero of an epic, the pious Æneas, was constantly prone, — called forth from Tooke, towards the close of his trial, a bitter but excellent rebuke. The witty defendant had been making some pretty strong imputations against the Attorney-Gene-

ral's integrity, which the party assailed thought it necessary to repel. He accordingly expatiated at some length on the value of character, and the excellence of his own: "He could endure any thing but an attack on his good name; it was *the little patrimony* he had to leave to his children, and, with God's help, he would leave it unimpaired." Here his voice faltered, and he burst into tears; and, to the surprise of every one, the Solicitor-General became equally affected, and wept in concert with his friend. "Do you know," said Tooke, in a loud whisper, to a by-stander, on finding this bit of pathos likely to tell against him, "do you know what Mitford is crying about? he is crying to think of the little patrimony Scott's children are like to get."

Of the sharp gibes which Erskine ventured on the unlucky Solicitor-General, during these long and vexatious trials, the reader of his life in these volumes is already aware. Mr. Mitford fell again in 1798, in the character of witness, under his lash, from a want of attending to that precise accuracy with which evidence is required in courts of common law. Having stated, on the trial of the late Mr. Ferguson, the details of the riot at Maidstone, in which O'Connor had attempted to escape, Sir John Mitford proceeded to state from his own recollection, that he saw the defendant *encouraging* that prisoner to make his escape, and incurred in consequence the following grave rebuke from the great leader at nisi prius for this unguarded passage in his evidence: "When the sentence was finished, I observed Mr. Ferguson, and some other persons whom I did not know, encouraging Mr. O'Connor to go over the bar." "Here we must pause. Mr. Gibbs asked the witness, upon his cross-examination, 'Did you hear him say any thing? Did you see him do any thing?' The Solicitor-General proved no one thing which Mr. Ferguson said or did. I am sure I mean nothing in the least disrespectful to the learned gentleman; but it certainly did not occur to him, at the moment, that it is not the office of a witness to pronounce by his own evidence that a man encourages or supports, but he is to depose what he hears him say, or saw him do, from whence the jury are to draw the inference which is fit. I really mean no sort of reflection. Perhaps

it arose from the habits of the Court of Chancery, whose practice is different from ours, and where the depositions are of a very general nature; but suppose the Solicitor were to die while I am speaking to you, and that though you should be satisfied as to all the rest of the evidence, you wished to have it explained with precision what was intended to be conveyed when it was said, 'Mr. Ferguson was encouraging,' would you condemn Mr. Ferguson upon that evidence without knowing distinctly what act he had committed?"

The meaning of the Solicitor's phrase "encouraging" was very clear, had he been permitted an opportunity of explanation; but the wary advocate saw his advantage, and left to the indignant witness the sole consolation of reflecting, that he was less acquainted with the rules of common law courts than his own. The incident is worth noting, as it proves the caution with which even the most eminent counsel should venture beyond their own proper precincts — how liable to trip the most experienced equity lawyer may find himself in the Queen's Bench — how much on his guard the oracle of nisi prius — illâ se jactet in aulâ — should be in Lincoln's Inn Hall. There indeed Sir J. Mitford was above animadversion; in the routine of practice, — in the knowledge of precedents, — in the full mastery of all the cases bearing in favour of his client, second only to his great colleague Sir J. Scott.

When that consummate lawyer became, in 1799, Chief Justice of the Common Pleas, the solicitor succeeded of course to the office of Attorney-General, and, as the political horizon had begun to clear, was spared the necessity of instituting political prosecutions contrary to the dictates of his placable and kindly nature. His period of office was short, but he had the good fortune not to be compelled to file a single criminal information for libel, and, in the solitary state prosecution of any importance which he conducted, — the trial of the maniac Hatfield for shooting at the king — he was complimented both by the judge and the opposing counsel on his humanity. Even in the conduct of harsh measures through the Commons, as the suspension of the Habeas Corpus Act, more stringent provisions in the law of high treason, and other bills of dark look and omen, which the critical nature of the times ap-

peared to render necessary, his wonted good luck accompanied him; the ungracious task being lightened by the overwhelming majorities which supported Mr. Pitt above every difficulty, and by the langour of despair into which the opposition had fallen. When that mighty minister retired from power in disgust, at the close of 1800, and the affectionate esteem in which the Speaker, Mr. Addington, was held by men of all parties, pointed him out as his fitting successor, the Attorney-General had the rare distinction of being solicited to fill the vacant chair. Considerably more than a century had passed since the election of any lawyer, who had filled the office of Attorney-General. Sir Robert Sawyer and Sir William Williams were the two last examples in the days of Charles II., both of whom Sir John Mitford equalled in talent, no less than he surpassed them in straightforward integrity.

There is a letter in the first volume of Twiss's Life of Lord Eldon, page 358, from Sir J. Mitford, when Attorney-General, to Lord Kenyon, stating the principles which guided him and Lord Eldon, in prosecutions for libels, which deserves transcribing:—

"The newspapers which your Lordship has sent me, I shall take the liberty of showing to the Solicitor-General. In these cases I have generally followed the rule which Lord Eldon adopted for his conduct, to notice, as much as possible, those cases only which did not personally involve his Majesty's ministers; conceiving that there was a much greater chance of success in prosecuting for libels aimed personally at his Majesty, or against the constitution in church and state, than where ministers were directly the objects of the libel. The many cases in which juries have shown an indisposition to notice personal attacks on ministers, have induced Lord Eldon and me to think that this forbearance was, on the whole, prudent. We have had, during the last seven years, many a painful moment in the consideration of these subjects, many more, not only than the world will give us credit for, but than even your Lordship can, from any view of the cases which have come under your eye, conceive. I think the press, on the whole, is

become more decent: and I flatter myself that the very temperate exercise of the office of Attorney-General, whilst Lord Eldon held it, and since it has been in one who has carefully followed his steps, has had an effect in producing a general persuasion that the powers of that officer have never been used, but where the case manifestly demanded that they should be put in force.

"I have ventured to trouble your Lordship so long on this subject, and to throw my sentiments so openly before you, because every man must feel that many, many very abominable libels have passed without animadversion."

When the letter of resignation from Mr. Addington had been read, Sir John Mitford, having previously relinquished the office of Attorney-General, was elected Speaker with unanimous assent. He declined the mockery of formal excuses and rhetorical self-depreciation, and declared firmly, "that he would not for a moment suppose, that any gentleman should think him unqualified for the situation to which his noble friend had proposed that he should be elected. By giving up his practice in the law, he had, in a pecuniary point of view, made sacrifices infinitely greater than any advantages that could arise from the situation to which he was then proposed. He had, indeed, entertained hopes that he should arrive at some other appointment, which the labours of his life and the practice of his profession might be supposed to render him most capable of filling. He had not however yet lost sight of these professional pursuits, which had secured to him a competence."

This candid confession of his wishes was meant to prepare the House for another resignation, in the event of a vacancy in any of the high offices of the law, and ought to have spared the Speaker elect from the sarcasm with which Sheridan taunted him on realising his hopes: "We have now had sufficient experience of the gentlemen of the law to know, that, though they call this the height of their ambition, yet, if any thing higher should be offered to them, they leave us to lament the loss of their experience and abilities."

Sir John Mitford held the situation of first gentleman of England, from February 11. 1801, till the 9th February,

1802, scarcely more than one session, when the death of Lord Clare brought the great seal of Ireland within his grasp. By a singular chance, Mr. Horne Tooke took his seat for Old Sarum, within a week after his old antagonist had assumed the chair: the moment of shaking hands must have been trying to the nerves of each, but they were both remarkable for courtesy, and the somewhat stately good humour of the one, and the never-failing snuff-box of the other, carried them safely over any unpleasant reminiscences. Though his term of office was far too short to admit of any comparison with his distinguished predecessor, he is allowed to have guided the debates of that humoursome assembly, in a season of considerable difficulty, with temper and discretion. But his merits were told at the time by Sir William Grant, and the authority of the eulogist is too high to require further testimony. The record of what passed is best supplied by the Journals: —

"On the 9th February, 1802, Mr. Ley, the clerk at the table, acquainted the House, that he had this morning received a letter from Mr. Speaker, which he read to the House, as follows: 'Palace Yard, 9th February, 1802. Sir, — His Majesty having been graciously pleased to signify his intention of appointing me Chancellor of Ireland, it has become my duty to resign the chair of the House of Commons, which I request you to communicate to the House at their meeting this day. I must entreat you at the same time to express to them in the strongest terms the regret with which I quit the high situation to which their favour had raised me, and my gratitude for their constant and kind assistance and support in my humble attempts to discharge the arduous duties of that important office. I have the honour to be, &c.

"J. MITFORD."

In moving the appointment of a new speaker, Sir William Grant expressed in high terms of eulogy his esteem: "It is impossible not to regret that we should so soon be deprived of the services of one who, in the short time that he has filled the chair, has so amply justified the choice that placed him in it. Indeed with knowledge so various and so profound — with information at once so accurate and so extensive, as he

possessed, he could not fail to do credit to that situation, even difficult as his predecessor had made it for any man to appear in it to advantage. It is some consolation that, if he be lost to our own immediate service, a great and valuable portion of the empire is about to enjoy the benefits of his talents in its first place of judicial magistracy. How he will fill that place can be no doubt with those, who know that in the whole compass of legal science there is nothing which his capacious mind has not embraced, from the minutest rules of forensic practice to the most enlarged principles of general jurisprudence. Fortunately for the country, the talents it produces are adequate to the various services which it requires."

Selecting his title from that county and district in which all his proud recollections of family centred, Sir John Mitford took out his patent as Baron of Redesdale. A vicinage formerly so noted for the predatory habits of its population, contrasted strangely enough with the character of the new law lord — a Redesdale-man was formerly synonymous with a robber. Had a legal chancellor been alone wanting to Ireland, the choice of ministers could not have fallen on one more worthy. In the full maturity of knowledge as a chancery lawyer he had no superior, and scarcely an equal. The Reports of Messrs. Schoales and Lefroy, which give in two most valuable volumes the judgments of four years, attest the supreme excellence of the judge. But for the Chancellor of Ireland, as the most influential member of the lord lieutenant's cabinet, there were some elements of success omitted, at a time when Ireland was shaken to its centre with rebellion. He had made himself unpopular with the main body of the Roman Catholics by an unguarded expression of hostility; his manners were too cold and unbending for that over sociable and excitable people, they cared more for his politics than his law, and little regarded how good the one might be if the other might be denounced by the foes of the Saxon as *bitter bad,* and neither the governor nor the governed would surrender their prejudices at discretion. His want of sympathy with the fun and frolic of the Irish bar, whose punning, rattling leaders attended more to plays and jest-books than to causes or precedents, was a minor evil, which the good feeling

on both sides soon sufficed to remedy, but which must have occasioned at first some unwelcome surprise, and disagreeable sensations. Sir Jonah Barrington has given a lively sketch of one of these rencontres, which, though coloured and exaggerated, bears intrinsic evidence that

"Some truth there was, tho' mixt and brew'd with lies."

"Lord Redesdale was much, though unintentionally, annoyed by Mr. Toler (Lord Norbury) at one of the first public dinners he gave as Lord Chancellor of Ireland to the judges and king's counsel. Having heard that the members of the Irish bar (of whom he was then quite ignorant) were considered extremely witty, and being desirous, if possible, to adapt himself to their habits, his lordship had obviously got together some of his best bar remarks (for of wit he was totally guiltless, if not inapprehensive) to repeat to his company, as occasion might offer, and, if he could not be humorous, determined at least to be entertaining. The first of his lordship's observations after dinner was, the telling us that he had been a Welsh judge, and had found great difficulty in pronouncing the double consonants, which occur in the Welsh proper names. 'After much trial,' continued his lordship, 'I found that the difficulty was mastered, by moving the tongue alternately from one dog-tooth to the other.' Toler seemed quite delighted with this discovery, and requested to know his lordship's dentist, as he had lost one of his dog-teeth, and would immediately get another in place of it. This went off flatly enough, no laugh being gained on either side. Lord Redesdale's next remark was, that, when he was a lad, cock-fighting was the fashion, and that both ladies and gentlemen went full dressed to the cockpits, the ladies being in hoops. 'I see now, my lord,' said Toler, 'it was then that the term cock-a-hoop was invented.' A general laugh now burst forth, which rather discomposed the learned chancellor. He sat for a while silent, until skating became a subject of conversation, when his lordship rallied, and, with an air of triumph, said that, in his boyhood, all danger was avoided, for, before they began to skate, they always put blown bladders under their arms, and so, if the ice happened to break, they were buoyant, and saved. 'Ay, my lord, that's what we

call *blatheram skate* in Ireland.' His lordship did not understand the sort of thing at all, and, though extremely courteous, seemed to wish us all at our respective homes. Having failed with Toler, in order to say a civil thing or two, he addressed himself to Mr. Garrat O'Farral, a jolly Irish counsellor, who always carried a parcel of coarse national humour about with him, a broad, squat, ruddy-faced fellow, with a great aquiline nose, and a humorous eye. Independent in mind and property, he generally said whatever came uppermost. 'Mr. Garrat O'Farral,' said the chancellor solemnly, 'I believe your name and family were very respectable and numerous in County Wicklow: I think I was introduced to several of them during my last tour there.' 'Yes, my lord,' said O'Farral, 'we were very numerous, but so many of us have been lately hanged for sheep stealing, that the name is getting rather scarce in that county.' His lordship said no more, and (so far as respect for a new chancellor permitted) we got into our own line of conversation without his assistance. His lordship began by degrees to understand some jokes a few minutes after they were uttered. An occasional smile discovered his enlightenment, and, at the breaking up, I really think his impression was that we were a pleasant, though not a very comprehensible, race, possessing at a dinner-table much more good fellowship than special pleading, and that he would have a good many of his old notions to get rid of before he could completely conform to so dissimilar a body; but he was extremely polite. Chief Justice Downes, and a few more of our high, cold sticklers for decorum, were quite uneasy at this skirmishing.

"I never saw Lord Redesdale more puzzled than at one of Plunkett's best jeux d'esprits. A cause was argued in Chancery, wherein the plaintiff prayed that the defendant should be restrained from suing him on certain bills of exchange, as they were nothing but kites. 'Kites, Mr. Plunkett!' exclaimed Lord Redesdale; 'kites never could amount to the value of those securities: I do not understand this statement at all, Mr. Plunkett.'—'It is not to be expected that you should, my lord,' answered Plunkett. 'In England and in Ireland kites are quite different things. In England

the wind raises the kites, but in Ireland the kites raise the wind.' 'I do not feel any way better informed yet,' said the matter-of-fact chancellor. 'Well, my lord, I'll explain the thing without mentioning those birds of fancy,'—and therewith he elucidated the difficulty."

That the Irish bar had some fun with an English chancellor is highly probable, but it would require great credulity to believe Sir Jonah's narrative as strictly true. Indeed there is internal evidence of the inaccuracy of one anecdote, as Lord Norbury was created a peer *before* Lord Redesdale went to Ireland, and therefore could not have sat at his table as Mr. Toler. It would appear from a letter written at this time by Lord Redesdale to Lord Eldon that the grave chancellor had at least as mean an opinion of his gay tormentors as they could entertain of him. Writing from Ely Place, May 4th, 1802, he says, "I have been engaged principally hitherto in eating and drinking. To-morrow I sit for the first time. Lord Kilwarden is a sensible man, but, I think, not strong. Lord Norbury—as you know. The Attorney-General I like, though he is not high as a lawyer. The solicitor has more character, and I like him too. Mr. O'Grady is a pleasant young man, Mr. Saurin sensible, but, I think, discontented. The rest are not of much importance." Those ranks comprised, however, Plunkett and Bushe, and, so far as notoriety can confer greatness, O'Connell.

But whatever difficulty the chancellor might find at first in understanding these men of singular natures, his courtesy in private, and judicial merits on the bench, soon rendered him a general favourite. His disquietudes originated in another source, and the libels with which he was assailed were darted by a veteran hand of more experience than an Irish counsellor's: strange to say, the chancellor discovered his chief enemies to lie in ambush beneath the judgment-seat, and detected an anonymous slanderer in the person of a judge. The publication of this clever political libel, the discovery of its author, his exposure, trial, and punishment, form one of the most interesting yet singular chapters in the range of legal history.

In May, 1804, Mr. Cobbett was convicted of having libelled the Lord Lieutenant (Earl of Hardwicke), the Lord Chan-

cellor, and others, in some powerful letters signed Juverna, published in his Political Register. After his conviction, he gave up the manuscript letters, which he had received by post from Ireland, to Government, who soon obtained evidence of the startling fact that they were in the handwriting of Mr. Justice Johnson, one of the puisne judges of the Court of Common Pleas in Ireland. Great excitement had been produced both in England and Ireland by the publication of Juverna's letters. They were universally believed to have been composed by the judge, and his official character doubled the point and energy with which they were written. Having commenced his letter with a quotation, "Equo ne credite Teucri," the sarcastic magistrate, after playing for a while with the fable of the wooden effigy, proceeds —

"Not that I would be understood literally; I do not mean to assert that the head of my Lord Hardwicke is absolutely built of timber; my application is only metaphorical, yet I cannot avoid suspecting, that, if the head of his excellency were submitted to the analysis of any such investigator of nature as Lavoisier, it would be found to contain a superabundant portion of particles of a very ligneous tendency. While I have been writing, a map of the West Indies happened to hang before me: suppose a powerful fleet of the enemies of the British name lay to windward, ready filled with troops for landing, whilst a desperate band of ruffians were secretly arming in its bosom: suppose a committee of West Indian proprietors should apply to Lord Haddington for support and assistance; and suppose he were to desire them to quiet their apprehensions, for that he had entrusted the care of their island to a very eminent sheep-feeder from Cambridgeshire, who was to be assisted in all counsels by a very able and strong-built chancery pleader from Lincoln's Inn. Give me leave to reflect what would a sugar committee say to such an answer? I may challenge the most daring supporters of the present government to produce me one single act in the lives of either of these truly great characters, which can entitle them to claim one particle of trust or confidence from the public, beyond the bounds and limits within which I have encircled their exploits. On the chancery

pleader, perhaps, I may have laid too great a stress; he is not of the first consequence, though, in a future letter, I may perhaps point out to you the mischief, which the intermeddling of such a man in matters out of the course of his practice may occasion."

In a subsequent letter, the writer drew a contrast between the conduct pursued by Lord Redesdale, and that which the late Lord Kenyon would have adopted.

"Had it pleased his majesty to appoint Lord Kenyon Chancellor over the warm-hearted principality, I can very well conceive what in such a situation he would have done, and, also, what he would not have done. From a rare modesty of nature, or from a rare precision of self-knowledge, Lord Kenyon would have acted with reserve and circumspection on his arrival in a country, with the moral qualities of the inhabitants of which, and with their persons, manners, and individual characters and connections, he must have been utterly unacquainted. In such a country, torn with domestic sedition and treason, threatened with foreign invasion, and acting, since the union, under an untried constitution, if Lord Haddington had required that Lord Kenyon should direct a Cambridgeshire earl in all his councils, Lord Kenyon would as soon, at the desire of Lord St. Vincent, have undertaken to pilot a line of battle ships through the Needles. Particularly the integrity of Lord Kenyon would have shrunk from such an undertaking, if a condition had been added to it, that no one nobleman, or gentleman, who possessed any estate, rank, or connection in the country, should upon any account be consulted, his pride would have spurned at the undertaking. It was said of Lord Kenyon that he loved money: if so, he loved his own money only, and not the money of any other man: Lord Kenyon, therefore, as Chancellor, never would have made any rule or order by the effects of which the secretary of a Master of the Rolls would be deprived of all fees, for the purpose of throwing all those fees into the hands of the secretary to the Chancellor, the better to enable that secretary to discharge the pension of some unknown annuitant on his official profits. The professional pride and the inborn honour of Lord Kenyon would

never have suffered him to enter into a combination to sap by underhand means the independence of his brethren the judges. He never would have suffered the great seal in his hands to be used for the purpose of garbling the bench, in order to gratify those who might be contented publicly to eulogise that government which privately they must have despised: nor would he have employed any of his leisure in searching into offices for precedents by which he might harass the domestic arrangements of others, whose pride and integrity could not bend to his views; and thus double the vigour of his attack by practising upon the hopes of some, and endeavouring to work upon the fears of others."

A true bill having been found by the grand jury at Westminster against the author of this attack, a warrant was signed by Lord Ellenborough for the apprehension of the Irish judge. He was arrested by virtue of an act 44 George 3, passed eighteen months after the publication of the libel, to prevent the escape of felons and other *malefactors* from England into Ireland, and vice versâ, it being enacted that 'if any person, against whom a warrant should be issued in England, for any crime or offence against the laws of England, should escape, go into, reside, or be, in any place in Ireland, it should be lawful for any justice of the peace for the place where such person should escape, go into, reside, or be, to indorse his name on such warrant, which should be a sufficient authority to apprehend the person against whom the warrant was granted, and convey him by the most direct way into England.' The warrant being accordingly indorsed by a justice of the peace for the county of Dublin, the judge was arrested (his friends said kidnapped) in his house at Miltown. On that evening a writ of habeas corpus was sued out, returnable immediately before the Lord Chief Justice. This was adjourned into the Court of King's Bench, where, after a solemn and eloquent argument, two of the judges delivered their opinions for remanding their brother judge into custody, and the other judge argued elaborately for his discharge. A new writ of habeas corpus was issued, returnable into the Court of Exchequer, where the argument occupied the Court three long days. Mr. Baron Smith

alone, in an oration of exquisite finish, declared against the legality of the proceedings. The Common Pleas concurred with the majority, and Mr. Justice Johnson, being remanded by the rigid construction of an ex post facto law, was brought to trial (a trial at bar) in the King's Bench on the 23d November, 1805.

Mr. Perceval, then Attorney-General, in a speech of considerable eloquence and feeling, expressed his serious concern at having to conduct this most extraordinary and important case; a case in which he had the singular misfortune of being obliged, in his character of law officer to the king, to bring before that high tribunal a brother judge, and to charge that learned judge with the offence of being author and publisher of an anonymous libel against the government of his sovereign; an offence the most alien that could be conceived from every sentiment of a liberal and ingenuous mind, from every sentiment of honorable feeling, from every idea of the principles which guide all in the defendant's exalted station. The hand-writing of the libel being proved by the belief of several competent witnesses, Mr. Adam, who led for the defence, had the difficult task of echoing every word the Attorney-General had uttered in condemnation of the libeller, as such topics confirmed the innocence of his client. "It was impossible a judge could be guilty of such meanness, and he would prove the writing to be another's." Mr. Gifford, one of the witnesses on whom he relied, baffled for a time, by his ready tact and repartee, even the practised ability of Mr. Garrow, as the following amusing extracts from his cross-examination fully testify: —

"Q. Do you mean to say all O's are round?

"A. No, sir, all O's are not round; but I say all English writings have a likeness to one another, otherwise they could not be read by Englishmen.

"Q. Then all Irish writing is alike too, I suppose?

"A. English and Irish writing is the same; I thought we were all one kingdom. Is there any difference?

"Q. In what does it resemble Judge Johnson's writing?

"A. The letters have something, at the first look of them, of his manner, till you come to look into them.

"Q. What! just as your face and mine are alike, till you come to look into them!

"A. Oh, sir, you do me honour!

"Q. If I wrote in a similar hand to that an invitation to you to dinner with Judge Johnson, should you think it came from him, and attend accordingly?

"A. If it had come to me, as a card, I should have put it into a rack, and, when the day came, I should have gone to dinner. In an invitation to dinner a man seldom considers the writing.

"Q. You say that this writing is larger than yours, and that Judge Johnson's is larger than yours: this writing then may be Judge Johnson's?

"A. Oh, sir, that is a gross *non-sequitur!*"

The jury, after a brief deliberation of scarcely a quarter of an hour, pronounced the judge guilty; a verdict rendered the more crushing by his miserable defence. Yet, strange to say, his character seemed exalted in the eyes of his eccentric countrymen by this conviction, and, as the libel flattered their prejudices, the author appeared to rise in popularity when there was no longer any doubt of his guilt. But "the times were out of joint" in Ireland, especially as regarded its judicial establishment. The Chief Justice Kilwarden had been lately butchered by a senseless and mistaken mob; a few years before the Hon. Richard Power, second Baron of the Exchequer, had drowned himself rather than appear personally to answer for the interest of some money received by him, as accountant-general of the Court; at this very time another judge of the Common Pleas, Mr. Justice Fox, was under grave charges, brought forward by the Marquis of Abercorn in the House of Lords, and narrowly escaped an address for his removal. For the honour of the judgment-seat, and that a judge might not be brought on the floor of the King's Bench to receive sentence as a criminal, government permitted a compromise, almost too favourable to the delinquent. Mr. Justice Johnson retired from the bench in 1806, on a pension of 1,200*l.* a year, which he continued to enjoy for many years, and his

younger brother, Mr. William Johnson, was appointed Justice of the Common Pleas in his room.

His retirement preceded the dismissal of the calumniated Chancellor by the interval only of a few weeks. It was a matter of course that he should resign the seals on the accession of "All the Talents" to office; but for his abrupt discharge from the chancellorship, he had partly his own indiscretion and far more the rancorous hostility of the Whigs to blame. When Attorney-General, he had almost gone out of his way to make himself unpopular in Ireland. He had supported the union, and at the same time had given utterance to the unpalatable truth, "that it was not to be dissembled—Ireland knew her own history; he did not wish to speak harshly, but, in truth, Ireland must be considered as a conquered country. Those who wished to overturn the government, had said of it with some degree of truth, that it was provincial and not national; that it did not resemble the English government; that national objects were not pursued, but that the whole was conducted by a cabal. There was truth in the statement, and Ireland must be governed so while she remained in her present situation. The government now were afraid of the physical force of the country being turned against them. The large majority of the people were of different religions, though the bulk of the property lay the other way. If they were admitted into the legislation, the consequence would be, that having power, they would soon make property change hands; for to give men power, and to suppose they would respect property, themselves having none, was to expect a degree of virtue which men did not possess!"

True to these principles, from the first day of his landing at the Black Rock, whence he was conveyed to the Castle in what they call a jingler (a sort of jaunting car), to the huge delight of the Dublin populace, down to the moment of his compulsory retirement, he omitted no opportunity of expressing his dislike to those of the Roman Catholic priesthood who traded in politics, and his sense of the abasement of the Roman Catholic population. Not bearing in mind the malicious exclamation of the patriarch, "Oh, that mine enemy

had written a book!" he indited a semi-confidential letter to the Earl of Fingal, on the occasion of appointing him a magistrate, enlarging upon these favourite but most unpopular notions, and inculcating a jealous suspicion both of priesthood and people. The sharp reply and rejoinder soon stole into circulation, and almost maddened the excitable natives. The impolicy of the epistle was so manifest that his friends in parliament contented themselves with severely censuring its unauthorized publication; whilst Canning and Fox vied with each other in loud reprehension of the writer. "The people of Ireland," said Fox, bitterly, "have never been very famous for discretion. It must no doubt then have been very gratifying to them to find that a grave English Chancellor, sent over to them, had been guilty of an indiscretion, to which indeed nothing could be second, for it was of that sort that nothing *simile aut secundum* could exist."

The Chancellor was too regardless of popular clamour to conceal his conscientious opinions, when taunted with them in the House of Lords. He stoutly maintained the justice of his strictures, stated that no Roman Catholic would live with a Protestant servant in his part of the country, and that they were ground down by their clergy to the lowest state of ignorance, degradation, and crime. The hot blood of Lords Ormonde and Donoughmore boiled over at these cruel aspersions on their race, and they charged the learned lord with descending from his high station to calumniate the country, whose laws he was bound to administer without dislike or favour to any class. Though his impartial administration of justice was above reproach, the Whigs lost not an hour on their accession to office in placing the seals in commission, and rejoiced in offering up the obnoxious Chancellor as a victim to national prejudice. Of this harsh precipitancy he complained with a natural and proper feeling of indignation on bidding farewell to the bar, the whole particulars of which leave-taking are too full of interest not to be placed on record.

When Lord Redesdale sat for the last time on the bench of the Irish Court of Chancery, 4th March, 1806, he addressed the bar in the following speech: —

"I must now take my leave. When I came to this country, I thought that I should probably pass the remainder of my days here. With that view I formed an establishment, and I proudly hoped to have lived amongst you, and to have died amongst you; but that has not been permitted. To the gentlemen of the bar I have the greatest obligation. I came amongst them a stranger: I have experienced from them every kindness; and I must say that I could not have left a bar with whom I could have lived in habits of more cordial intercourse. Perhaps I may (on some occasions I am aware that I must) have used expressions which have appeared harsh at the moment, but, I hope, they were only such as were suited to the occasion. My design was not to hurt the feelings of any, and if I have done so, I am truly sorry for it. I wish to depart in peace, and in good will with all. To the officers and practitioners of the Court I must say, that, though with respect to a very few of the latter, I have had occasion to animadvert with some severity, their conduct in general has been highly satisfactory. As to the officers of the Court, they have all, in their several stations, endeavoured to assist me to the utmost of their power; they have materially done so, and I owe them sincere thanks. It would have been my wish to have continued to sit until the gentleman who has been named to succeed me should have arrived. I believe it was his wish also, and I have every reason to think so, and from him I have experienced every degree of politeness and attention. I am sorry that other persons should have thought me unworthy to have been entrusted with the seal during the interval. What can occasion this (which I cannot but consider as a personal insult) I am unable to guess; but I have been informed that a peremptory order has come to the Lord Lieutenant not to suffer a moment to elapse in preventing the great seal from longer remaining in my hands. I know not whence this jealousy of me has arisen, or how my continuing to sit in the Court of Chancery (for I could make no other use of the seal, but under the warrant of his Excellency) could interfere with any views of his majesty's ministers. I am proudly conscious of having discharged the duties of my station with honesty and integrity, to the best of my abilities.

For the office I care not, except so far as it affords me the opportunity of discharging conscientiously an important public duty. It was unsought for by me. I came here much against my will. I came from a high station in England, where I was living amongst my friends and in the midst of my family. But I was told that I owed it to public duty and to private friendship to accept the office, and I yielded: I yielded to the solicitations of some of those who have concurred in my removal. This, I own, is what I did not expect, and what I was not prepared to hear. But I feel most of all that so little consideration has been had for the public business, and the interests of the suitors of this Court.

"You must all know the avocations of those who have been named as commissioners. The Master of the Rolls has already as much business as he can conveniently discharge; the Lord Chief Justice and the Lord Chief Baron have their several avocations, which must prevent their attendance in the Court of Chancery. I am extremely sorry that a great deal of business will in consequence be left undone, which ought to have been disposed of before the rising of the Court; but so it has been thought fit; and now I have only to say that, in returning to the country from whence I came, I shall be most happy, if it should ever be in my power, to be of service to Ireland. Ireland will always have a claim upon me. Had I continued in the Commons' House of Parliament I might have been able to do much service; in the other House that power is much lessened; but, such as it is, this country may ever demand it. To this country I have the highest sense of obligation. I do not know that, in a single instance I have experienced anything but kindness. I have experienced it from all ranks of people without exception. Under these circumstances I retire, with a firm conviction that you will do me the justice to say that I have discharged my duty with honest and conscientious zeal, to the extent of my abilities, and that on this head I have nothing with which to reproach myself."

The Chancellor, says Plowden, in his History of Ireland, was much agitated, and shed tears profusely. His address, pronounced in a manner dignified as well as pathetic, excited

strong and general sympathy. After a pause of a few moments, the Attorney-General, Mr. O'Grady, rose, and, in the name and by the direction of the bar, addressed Lord Redesdale in these words: —

"Thus called upon, and having had an opportunity of communicating with a great majority of the gentlemen, who have practised in the Court of Chancery, during the time that your lordship has presided, I feel myself authorized to express their sentiments on this occasion. We have a just sense of those endowments, which have so eminently qualified you to preside in a Court of Equity. Whilst your impartial attention has secured to the honest suitor the full investigation of his claims, your sagacity and patience have taken away from fraud all hope of impunity, and all pretext for complaint. We return your lordship our thanks for the instruction which we have received in attending to the series of decisions by which, during the period of four years, you have advanced the science we profess. But, most peculiarly, and from our hearts, we beg leave to make our grateful acknowledgments for the uniform courtesy and kindness which we have experienced from you in the discharge of our duty at your lordship's bar. Under these impressions we take leave of your lordship; the consciousness of having thus well discharged the duties of an elevated and important station must render you independent of our praise; we trust, however, that this sincere tribute of esteem and gratitude which is now offered will not be deemed unacceptable."

Far different from the respectful regret of the bar was the exultation of the misguided populace. Plowden says, "the instantaneous removal of Redesdale from his situation, even before his successor had arrived in Ireland, diffused incalculable satisfaction through every rank of the Catholic population, which he had so coarsely and unfoundedly insulted and traduced."

This passage of a vehement partisan is cited to prove the detestation in which the Chancellor was held by those vast and ignorant masses of which the historian formed the organ. However much the sympathy of the bar, and of the Protestants of Ireland, may have soothed his wounded feelings, there

were not a majority of voices there to cry on his departure "God bless him;" and to what extent soever the law suffered by his removal, the estrangement between him and the Irish Roman Catholics was too complete to permit of his resuming the seals in the following year, when his friends regained the government. Lord Redesdale was hated by the factious Roman Catholic party, because he had the courage to tell the truth about them; but the whole Protestant body and friends of the union, who rejoiced in a better administration of the law than had been before known in Ireland, lamented his departure. The office was again offered to him in 1807, but declined. When his brother-in-law was at the head of affairs, his old and intimate friend, Lord Manners, continued Irish Chancellor, for Lord Redesdale was far too high-minded to seek his removal. He had gone in the first instance, most unwillingly to Ireland, yielding to the pressing solicitations of his friends, and had no disposition to return there, after he had once quitted it. Probably the estrangement between him and the Roman Catholic party may have been an additional reason for his declining to return. His happy circumstances in domestic life, and independent fortune, had rendered the ex-Chancellor little anxious for official trammels, and now that "the grey hairs had something mingled with his younger brown," not over importunate for place. His judgments as Chancellor command and deserve the highest respect. He always took it for granted in these judgments, whether rightly or not, that every one present was ignorant of the first principles of law. He therefore thought it incumbent on him to embody in all he said a lucid exposition of principles, a clear statement of facts, and an irresistible cogency of conclusion, so that he that runs may read the justice of the decree. But in variety and extent of legal knowledge, in intuitive quickness in seizing upon the merits of a case, in profound researches into the law of real property, and perfect acquaintance with the practice of conveyancing, Lord Eldon was superior to his illustrious rival.*

The year after his appointment as Chancellor, in June, 1803, Lord Redesdale had been married by Bishop Barrington

* Law Review.

to Lady Frances Perceval, seventh daughter of the Earl of Egmont. By this marriage, fortunate in every respect, he had a family of four children: one son, John Thomas, the present Lord, born in Ireland, in 1805, and three daughters, Frances Elizabeth, and Catherine and Elizabeth.

In 1808, by the death of his relative Mr. Freeman, he succeeded to a large estate and Batsford Park in the county of Gloucester. Having no domestic cares, but such as constitute at once the duty and pleasure of every country gentleman, active in his mind and habits, and justly deeming his title and retiring pension retainers for his country's service, he joined assiduously in the discussions of the House of Lords, was unremitting in his attention to appeals, and by his elaborate judgments gave general satisfaction both to the practitioners and suitors in that high court of appellate jurisdiction.

Upon all topics connected with Ireland he brought to bear his inveterate habits of patient research, and it is only an act of justice to his memory, which has suffered from the reproaches cast upon his alleged prejudices, to show, by his letters and speeches, how well he understood the cause of the evils, under which that country groans. How much unhappy truth is there in the following representation which he made when Chancellor to Mr. Wilberforce:

" December 18th, 1805.

" My dear Sir,

" Your letter of the 12th, dated from the Temple, near Leicester, has found me in my country retirement, but retired, not because I ought to have leisure for retirement; but because the gout in its consequences has disabled me from doing business: the pain of the disorder has left me, but it has produced a languor, which deprives me of rest. For near a month, first from pain, and then from its consequences, I have seldom enjoyed an hour's sleep in any one night. Air, and exercise, and medicine, have been all hitherto tried in vain. I hope, however, by degrees to recover my strength and ordinary rest, when my mind shall be wholly relieved from the anxiety of business.

" It gave me much pleasure to find that the remembrance of an old friend was so acceptable to you. I often think of my friends in England, and regret the spot where alone 'English minds and

manners may be found." You are in a considerable degree right in the judgment you have formed of this country, and of the mistakes of English ministers with relation to it. It is true that the diseases under which Ireland labours are principally moral and social, and that now the Parliament is gone, its political diseases are comparatively small. But the diseases under which it has so long laboured have so contaminated the minds of the people, that it will require much time and much care to restore them to a sound moral and social state. Our friend, Lord Wellesley, lately sent me Major Wilks's Report of the Interior Administration, &c. of the Government of Mysore, and I was much struck with some passages, as demonstrative that the same causes will almost universally produce the same effects on the minds of men. In page 26., speaking of the manner in which causes are decided in Mysore, Major Wilks observes, that it is a fixed rule of evidence to suspect as false the testimony of every witness, until its truth is otherwise supported. A barrister in high practice at the Irish bar gave me, almost in words, the same caution soon after my arrival here, and it has been confirmed to me since by many. Major Wilks states conversations with the Dewanny of Mysore, and other intelligent persons, in which they avowed, as an abstract proposition founded on experience, that the presumption is infinitely stronger against the veracity than in favour of the truth of a witness, and the Major concludes by attributing the defective morals of the people of Mysore to the habitual necessity of opposing fraud to force under the despotic governments which had oppressed them; and that a better order of things would probably reduce the evil. He also supposes the religious system of the country may in this point be particularly defective, and may not produce that influence over the morals of the people, which has been considered as the best security for the probity of men. It seems to me, that, in both these points, there is a strong resemblance between Mysore and Ireland; and that the removal of an openly corrupt Parliament, a due administration, a strong civil government, affording full protection to the weak against the strong, assisted by a better sense of religious duty, will correct the defective morals of the people of Ireland. Above all, I believe that the extension of the representation throughout the country would operate strongly and decisively. The Roman Catholic priest in Ireland never teaches to his flock the first obligation of moral duties. Superstitious observances tend much more to his profit and to the maintenance of his authority. He severely punishes a slight breach of these observances; he

readily grants absolution even for murder, or a very slight penance. The bad morals of the Roman Catholics corrupt the morals of the Protestants. They are induced to oppose falsehood to falsehood, fraud to fraud, force to force. There are still large districts in Ireland in which it may be said the king's writ does not run; that is, it is obeyed or disobeyed at the will and pleasure of the most powerful. The establishment of schools is rapidly increasing in Ireland, and the diffusion of something like knowledge must do good. The Archbishop of Cashel observed to me the other day, that men who were taught to read, and by degrees got books into their hands, would soon cease to be the dupes of such an abject superstition, as led them to eat the ashes of a dead priest as a preservative against evil. Much is doing and may be done in this way, and if ministers will but give attention to those who see Ireland in Ireland, twenty years may produce a great change. I have written a long and, I fear, a tedious letter, and Lady R. reminds me I have written too much. She begs to join in respects to Mrs. Wilberforce, as well as yourself, with, my dear Sir,

"Your faithful humble servant,

"REDESDALE."

Another of his letters is fraught with a profound knowledge of that unhappy country.

"In England, the machine goes on almost of itself; and therefore a very bad driver may manage it tolerably well. It is not so in Ireland. That country requires great exertion to bring it to a state of order and submission to law. The whole population, high and low, rich and poor, Catholic and Protestant, must all be brought to obedience to law; all must be taught to look up to the law for protection, and to treat it with reverence. The character of the gentry, as well as of the peasantry, must be changed: the magistracy must be reformed. There must be no such sheriff as Sir V. C., whose letters you may remember to have seen in an appeal case in the Lords, no such justices of the peace, and the principal nobility and gentry must be prevailed upon to act as justices of the peace, as they do in England, and to attend the quarter sessions. The gentry are ready enough to attend grand juries to obtain presentments for their own benefit; but they desert the quarter sessions of the peace. The first act of a constable in arresting must not be to knock down his prisoner; and

many reforms must be made, which can only be effected by a judicious and able government *on the spot.*"

A single passage from his many speeches on the never-failing subject of Irish affairs will suffice to show his habits of minute observation, and the practical utility of his suggestions:

"A gentleman he knew had let 13,000 acres for lives, or a long term of years, reserving 800 acres of demesne lands, and now he had a greater rent from the 800 acres than from the 13,000. A great proportion of the Irish tenures are grants of long terms at low rents. When such small rents had been retained by the original landlord, the lands would naturally sub-let perhaps six deep, the rents rising progressively. In Ireland, he was sorry to say, the remedy of distress was more commonly applied than in England. Almost every estate had what was called its driver. The occupiers, unfortunately, often took the lands at more than they could pay, except in plentiful years, and only the produce of the land remained to pay the rent. This gave occasion to many frauds in removing that produce, and these, he was sorry to say, had a bad effect on the character of the Irish peasantry, which was not what one would wish it to be. They had in general no capital, the rent could only be paid out of the produce of the land, and a bad season consequently disabled them to pay. They should cast altogether in their minds, whether the sub-demising of lands, with a power of distress, might not be checked; whether it might not be provided that afterwards no sub-letting, with such a power, should be allowed."

The evils thus clearly marked out are, fortunately for Ireland's peace, in progress of removal. Of the gigantic mischief, which the ex-Chancellor denounced in such forcible terms as to have become proverbial, there will soon, we may hope and believe, remain no trace. He declared, in 1822, "that he had been connected with that country for the last twenty years, and he was sorry to say that there existed in it two sorts of justice; the one for the rich, and the other for the poor, and both equally ill administered."

The only law peer in the House of Lords who had sufficient leisure to attend to legislative reforms (for Lord Eldon was

one of those sovereigns who could bear no brother near the throne), Lord Redesdale, in conjunction with the eccentric Lord Stanhope, studied the order-book diligently, and, though he obstructed some valuable measures, he introduced others of sound practical utility. The only competitors of Lord Eldon in public estimation were Lord Redesdale and Sir William Grant. Lord Redesdale was, if his contemporaries are to be believed, a better draftsman than Lord Eldon, a better prothonotary, more deeply versed in constitutional law, had a clearer and more accurate method in his arguments, and a more perfect recollection of the decided cases of that and the preceding generation. Lord Eldon's memory-notes are short and apposite; he seldom failed to retain the point decided; but of dates, names of parties, and other circumstances, his recollections seldom preserved more than the torso, while Lord Redesdale would recover a perfect statue.*

It is curious to observe the feelings with which the greatest of these great men regarded the other at different periods of his rise. "The book that has been referred to (Mitford's Pleadings) is the production of a very diligent and learned man, not once given to the world, or hastily, but after search and research into every record, and again given to the world by him." A cold commendation, and "craftily qualified;" a rival could not have said less, a friend would have said more. This was said early in 1802, when Sir John Mitford was a commoner, "a strong-built chancery pleader from Lincoln's Inn, and speaker of the House of Commons." Two years afterwards, when he was a peer and Lord Chancellor of Ireland, the thermometer of approbation mounts. "Lord Redesdale's book is a wonderful effort. The reports of his decisions will, I am persuaded, give great information to the profession upon many important points of equity." "The library and mind of Lord Redesdale are both equally large storehouses of equity learning." Some years later Lord Eldon adds, "Your lordships know what valuable assistance we have in all Irish cases from Lord Redesdale, even where the causes were not before him below. He knows more about this case than all the rest of us put together."

* Law Review.

To turn his knowledge to account, he introduced, as ex-Chancellor several valuable legislating reforms. Of these his chief and crowning reform was the Insolvent Debtors' Act, the painful labour of several sessions. The draft of the original scheme was crude and undigested, but its author proved to demonstration the impolitic cruelty of the law, as it was then administered, and, with the aid of several Committees, at length perfected a measure, which not even the vehement hostility of Lord Ellenborough, nor the undermining opposition of the Chancellor, could overcome. The chief justice protested against going into a committee of inventions, and declined becoming the drudge to carry out new-fangled conundrums. When Lord Redesdale apologized for some mistakes in the Report which he had drawn up for the Committee appointed to investigate the laws of debtor and creditor, Lord Ellenborough observed sneeringly, that his noble friend might have the same consolation that was offered to a contrite author, who expressed in his latter days great apprehensions lest his writings should do injury to posterity, when his friend bade him be easy, for nobody had ever read or would read them.

In private Lord Ellenborough's violence knew no bounds. He declared that the act was nonsensical and unintelligible, and that Lord Redesdale ought to be put in a strait waistcoat.* Far different was the effect of his salutary reform on the mind of the humane Sir Samuel Romilly, whose pathetic eulogy seems marked with no less truth than feeling. "Had such a bill been passed at the beginning of the present reign, how much misery might have been averted; how many hearts, now broken down with sorrow, might have beat high with exultation, at having regained that station in society, which they had once adorned, and at having been enabled to fulfil with honour those engagements which, though interrupted by misfortune, had been rendered impracticable only by subsequent persecution."

The legislative schemes of the ex-Chancellor were not restricted to this one measure, however admirable. He suggested a method, since adopted, to enlarge the sum for which

* Romilly's Memoirs.

persons could be arrested on mesne process, and brought in a bill to carry county courts into full effect throughout England. He was compelled to relinquish both proposals, as they did not meet with the sanction of government, but the seed, which he cast upon the waters, germinated after many days. The bill for appointing a Vice-Chancellor, whose practical utility has been made so manifest, that two additional judges have been recently appointed, was introduced into the House of Lords under Lord Redesdale's auspices, and enforced, in spite of much obloquy and a strenuous opposition, by his announcement, that, of the 270 appeals and writs of error then on the table, the last, according to the mode of hearing hitherto acted upon, could not be decided for eleven years from that time. Life should have been protracted to its period before the deluge, to let an unhappy suitor linger in silence beneath the pressure of such an enormity.

Lord Redesdale also prepared a bill for the commutation of tithes in Ireland.

His merits as a sound legal reformer are the greater when we consider that the bent of his mind tended more to brave, than to court popularity; that he liked opposing better than yielding to the inclinations of the people, like those birds of strong pinion, who love to fly against the wind. In this spirit he resisted a free trade in corn, the emancipation of slaves in the West Indies, the repeal of the Test Act, and the emancipation of the Roman Catholics; he would not imitate the conduct of the Saxons, "in buying off the Danes." He also resisted all those admirable improvements, which Romilly sought to engraft on our criminal code; and he contended that all objections against the influence of the crown were at all times the result of clamour, and not of principle.

When it was proposed in 1817, to legalize the receiving voluntary contributions from persons holding offices and pensions, Lord Redesdale inveighed against the measure. He had supported the property tax, but he deprecated the plan of a partial taxation to be paid under the compulsion of public odium; "for his own part, he was determined not to be *hooted* out of his money." On the discussion of questions of finance he always entered with much zest, and composed several essays, which are still preserved in the Pamphleteer.

The Rev. Mr. Sinclair, in the life of his father, mentions that among Sir John's most voluminous correspondents upon currency, may be classed this acute lawyer and experienced politician. From his valuable letters he extracts the following very curious prediction: —

"The present system (1822) seems to me likely to produce a continual change in the relative values of agricultural produce and money; a continual depression of the agricultural interest, and finally general distress, and a total subversion of the British constitution, founded and dependant as it is on landed property. In truth, it seems to me to lead directly to radical reform, revolution, and all the evils which radical reform has produced in France, and is now producing in Spain."

His last political lucubrations upon Ireland, will be in the judgment of many more valuable than his prophetical statistics.

"With respect to Ireland generally, and with respect to the Catholics particularly, the government has at all times been very ill conducted. As the Attorney-General of James I. said, 'Ireland was never fully conquered,' and was never made duly obedient to law. When the constable cries 'Stop thief,' the people cry 'Stop the constable.' Mr. Pitt, Mr. Fox, and every minister for the last forty years and more, have constantly, grossly, mismanaged with respect to Ireland. The first great blunder was in Lord Townsend's lieutenancy, when, to get rid of the Ponsonbys and that faction, Lord Townsend set up the Beresfords and that faction, and handed over Ireland from the former to the latter. The Ponsonbys and their faction before that time called themselves the heads of the Protestant interest, and ruled Ireland as they pleased. When deprived of their power, they turned round to the Catholics, and became the advocates of emancipation. Had the lord lieutenant had the good policy, when he had knocked down the Ponsonby faction, to play the two factions against each other, allowing the Ponsonby faction a fair share of interest and power, they would not have turned Catholics. But like Satan they thought it 'Better to reign in Hell, than serve in Heaven,'

and they have in consequence played the very greatest mischief in Ireland. If I were asked what should now be done, I should say nothing, until Ireland can be made fully obedient to law; and it is the fault of the government that Ireland is not obedient to law. If I were told that something must be done, I should deny the must; but if the minister should say, I will do something, but not all, I should say, then you must no longer coquet with the Catholics, but say, this I will do, and no more. Take what I offer or not as you please. All the Catholics of property would take what was offered, and the priests and agitators would refuse; and then the question would be whether the Catholics of property or those with no property were to rule? The whole business, as managed by every government for many years, has been a tissue of folly, and ministers seem never to have collected any wisdom from what has happened. The world at present is enjoying the benefit of the march of intellect, which has been (perhaps truly) called the 'Rogues' March.'"

Upon other subjects still more immediately connected with his recollections as a lawyer, and duties as a peer, Lord Redesdale wielded the pen of a ready writer. In 1826 he wrote a valuable pamphlet entitled "Considerations suggested by the Report made to his Majesty under a Commission, authorizing the Commissioners to make certain Inquiries respecting the Court of Chancery." In the popular language of the day, it smashed the report of the Chancery Commissioners, and expressed in pointed terms the opinion of the experienced author, that every thing connected with the administration of justice had grown to a bulk and dimension which rendered the business unmanageable. "The solicitors, according to him, were at once above their occupation and below it. The briefs, ironically so called, were swollen to an extent which rendered them unfit for use. The speeches of counsel, so let and hindered by the quantity submitted to their perusal, were extended upon the principle of compensating for defect of value by amount. Acts of Parliament were too long, and the speeches thereupon, also bills and answers, declarations and pleas, deeds of all descriptions, and conveyances particularly, were too long, judgments were too

long, and so were the reports of them. Formerly in five minutes' reading an intelligible point of law was presented to the mind, now you might read an hour or two and collect no point at all. Everything, in a word, according to the learned lord, partook of this besetting and prevalent vice."

The author of this commentary upon Lord Redesdale's pamphlet (proved by internal evidence to be Lord Brougham) adds pleasantly, "We are sure that his lordship is much too good humoured a man to be angry, if we remind him, that long speaking at the bar is not quite a modern invention. We recollect to have heard of a certain learned solicitor-general who took eight or nine hours to his share in one trial in 1795."

In 1820 Lord Redesdale drew up a most valuable Report for the Lords' Committees, appointed to search the journals of the House, rolls of parliament, and other records and documents for all matters touching the dignity of a peer of the realm. He established an important truth, that the present constitution of the English legislature was not older than the thirteenth century, and pursued his researches with unwearied acumen and diligence. We have frequently profited by these remarks, says the Edinburgh reviewer (vol. 35.), and learned to hesitate from their doubts. "We owe this further praise to the commissioners, that their inquiries appear to have been conducted with every disposition to fairness and impartiality. We have not found in their report any undue bias in favour of the crown, and have been seldom offended with any of the ancient Tory prejudices against popular claims. When they have occasion to notice an act of doubtful authority on the part of the king, there is no attempt to mislead or deceive us by saying it was done by virtue of the inherent prerogative of the crown. The commissioners distinctly acknowledge that at all times a supreme authority existed in England different from prerogative." "Their view (Lord Redesdale loquitur) of the various documents to which they have had recourse, has tended to convince them that, whatever may have happened in practice, the prince on the throne was at no time considered as constitutionally above the law, and that, to use the language of an eminent writer, Sir John

Fortescue, Chief Justice of the King's Bench in the reign of Henry VI., and afterwards his Chancellor, when an exile in France, the government of the King of England was not simply regal, but political; and that the maxim, 'Quod principi placeret legis habet vigorem,' was never a general maxim of the constitutional law of England. But though such was probably then, as well as in later times, the theory of the constitution of the English government, in practice the exertions of power by the crown often went beyond their legal bounds, and there did not always exist that ready and constant control, which now keeps the constitutional system in its true order. That control has been principally produced, and made effectual, by the necessary expenses of the state, which gradually exceeded, and at length vastly exceeded, the hereditary revenue of the crown, so that the government of the country could not be carried on by the king without frequent, and, latterly, without constant, recourse to the authority of the legislature, to provide the necessary supply."

After pointing out many errors in the Report, the reviewer concludes with the following half-complimentary recognition of the author.

"We consider ourselves greatly indebted to the commissioners for their labours, but have deeply to lament that so much industry has been conjoined with such negligence. That so much unnecessary caution on some topics has been accompanied with such rashness of assertion on others, and that so many sound and liberal views respecting our ancient constitution have been obscured by prejudices from the school of Brady and other enemies of popular rights. We know no other way to reconcile these inconsistencies, unless on the supposition that the author of the Report is a young adventurer in the paths of constitutional antiquities, who brings with him to the pursuit an active mind, exercised in subtle and minute investigations, but who is still dazzled by the novelty of the scenery, and not yet sufficiently acquainted with the region he attempts to explore, to know in what quarter to direct his steps, or on what object to fix his attention; while his judgment is warped and perverted by the

false and prejudiced accounts he has perused of former travellers, on whom he obstinately pins his faith, in opposition to the evidence of his own senses."

As might be conjectured from this Report, Lord Redesdale was the leading authority on the law of peerages. In some cases, especially the Banbury and L'Isle peerages, he is supposed to have carried his rigid scruples against obsolete claims to an unreasonable excess. He led the opposition to Lord Erskine's motion, that General Knollys had made out his claim to the title, dignity and honour of Earl of Banbury; and prefaced his ingenious remarks with an appeal to the prejudices of his hearers. "This is a question not simply between the crown and the claimant; it affects every earl, whose patent is of subsequent date to the patent of William, Earl of Banbury." It would be difficult, says Sir Harris Nicolas, in a note to his report of the trial, "to comment upon this sentence with too much severity. As evidence of the *animus* with which the speaker approached the subject, it is, however, very important, and when it is remembered that his lordship was then acting both as a judge and a juryman, and was addressing a body of persons to whom the same duties were entrusted, that he had once filled a high judicial office, and that his opinions had great weight, this appeal to the prejudices of his auditors was, to say the least, highly objectionable. Let it be supposed for a moment that a judge should commence his charge to a jury in these words: 'This question affects every one of you, gentlemen of the jury, who holds his lands by a deed of a subsequent date to that on which the plaintiff's title rests, and the validity of which you are now to determine.'"*

"When the petition," added the learned lord, "of Nicolas, the ancestor of the claimant, came under the consideration of the House in 1661, the Committee of Privileges, to which it was referred, instead of reporting whether the claimant was legitimate, or illegitimate, came to the extraordinary resolution, that he was legitimate in the eye of the law. It may safely be inferred that the expression could only be introduced to show that the law and the fact were at variance. Now what was the law, which the committee followed

* Sir H. Nicolas' Report of the Banbury Peerage Case.

on this occasion? Not the law of England, for it would have led them to a different conclusion: but a certain law, laid down by Lord Coke in his Commentary on the Institutes. I have a great respect for the memory of Lord Coke, but I am ready to accede to an observation, made by some of his contemporaries, that he was too fond of making the law, instead of declaring the law, and of telling untruths to support his own opinions. Indeed, an obstinate persistance in any opinion he had embraced, was a leading defect in his character. His dispute with Lord Ellesmere furnishes us with a very strong instance of his forcing the construction of terms, and making false definitions when it suited his purpose to do so."

Sir Harris Nicolas submits that those who are best acquainted with the speeches and opinions of the noble lord, will smile at his description of Lord Coke, and may perhaps exclaim

> "Mutato nomine, de te
> Fabula narratur."

Whatever objections, however, may be pointed out by deep antiquarians, or black letter lawyers, to his judgment, it must be admitted that he placed the law of legitimate descent on a more rational footing than it had ever stood before, and that, in exploding the old doctrine of *quatuor maria*, he consulted the dictates of sound common sense.

Lord Redesdale was so jealous of claims to peerages made after a lapse of centures, that he gave notice of his intention to introduce a bill into parliament to make a limitation of time, as applicable to a question of peerage, as to a right of any other description. We are glad that he never carried his intention into effect, for there would be a palpable injustice in fettering the claim to a barony with the same limitations which bar a civil action, in extinguishing by statute that right of an ancient heir, which the crown itself is unable to destroy.

Incensed at the consequent rejection of his claim to the peerage, of his right to which he was so satisfied, that he persisted in describing himself as Baron Sudeley per legem terræ, Sir Egerton Brydges penned in revenge a violent

critique on Lord Redesdale's judgment, and condescends even to caricature his personal appearance. "His arguments on the Banbury Case," says the disappointed critic, "are unintelligible, full of contradictory sophistries, and suicidal. He seemed to be in the habit of taking each crotchet of his mind separately; all his mind was broken into exilities. He was a sallow man, with round face (vide Cleopatra), and blunt features, of the middle height, thickly and heavily built, and had a heavy, drawling, tedious manner of speech."

The passage in Shakspeare, to which the splenetic baronet refers, is doubtless act 3, scene 3, of Anthony and Cleopatra, where the Egyptian queen, inquiring of her rival Octavia, asks,

"Bear'st thou her face in mind; is't long, or round?

Messenger.—Round, even to faultiness.

Cleo.—For the most part too they are foolish that are so."

The commentators add, "This is from the old writers on physiognomy. So in Hill's Pleasant History, &c. 1613. 'The head very round to be forgetful and foolish.'" But when Sir Egerton gravely attributes foolishness to the great law lord for this peculiarity, he only proves his own.

I remember seeing Lord Redesdale, then eighty years of age, conducting Miss Turner's divorce bill from Gibbon Wakefield through the House of Lords. He was looking round and rubicund, and presenting that appearance of cheerful old age, "frosty, but kindly," of which our peerage affords more numerous examples than any other nobility in Europe. He had a look of good humoured intelligence, that bore no approach to weakness, the model of a hearty old gentleman, such as all who knew and admired the passages of his life, as lovely and of good report in private as useful and estimable in public, would have wished him to appear. For a few months more he continued in full enjoyment of his intellectual and bodily health, and then sank by gradual, unperceived decay, expiring painlessly at his seat at Batsford Park on the 16th January, 1830, in his eighty-second year.

Few lawyers have filled with credit so many and such distinct offices of trust and power, nor have any crowded into twenty-five years of unofficial life such an infinite variety of legislative and judicial good. By the well-applied exertions of a long and active life, he has become a benefactor to all classes of his countrymen. Of his own order he commands the grateful esteem, for he watched the rights and privileges of his brother peers with almost jealous vigilance, and contributed to raise their Court of Appeal in the last resort, to that high consideration which it still bears. To his profession he has bequeathed an excellent legacy, in his writings, and admirable judgments, elucidating and confirming the law of real property. But of the humbler members of this great community, he merits in an especial manner the respect and homage, exposed as they are to fluctuations and distress; for it was he who first turned aside the law from indiscriminately visiting misfortune with the penalties due to crime alone, and stamped upon the Statute Book the great Christian precept, "to proclaim liberty to the captive, and the opening of the prison to those that were bound."

CHAPTER IV.

THE LIFE OF SIR WILLIAM GRANT.

THE lineage and name of Grant are of the highest antiquity and consideration in Scottish annals. In a singular work published in 1795, intituled "Memoires Historiques, Généalogiques, &c. de la Maison de Grant, tant en Ecosse qu'en Normandie, en Allemagne, en Suède, en Dannemarc, &c., par Charles Grant, Vicomte de Vaux," the author, a French emigré, but hearty clansman, traces the name by its etymology to the French Le Grand, and enumerates, among the worthiest modern scions of the house, "Monsieur William Grant, membre du Parlement Britannique." Lion King of Arms, he informs us, can certify the greatness of this powerful, ancient and numerous race. The descent from former renown to that obscure branch of the family, from which this great lawyer sprung, is like tracing a mighty stream into its creeks and shallows.

William Grant, descended from the Grants of Baldornie, was born at Elchies, on the banks of the Spey, in Morayshire, in 1755. His father had been a small farmer in that county, but migrated soon after his birth to the Isle of Man, where he filled the office of collector of the customs. Both his parents dying when he was very young, the care of his education devolved on an uncle, a wealthy merchant of London, and afterwards proprietor of Elchies, who discharged his duty well. The boy William was brought up, together with a younger brother, who afterwards became a collector of customs at Martinico, at the grammar school of Elgin, and boarded at the house of Mr. John Irvine, nephew to the minister. The grateful scholar contributed largely to the rebuilding of the school-house thirty years later, when the 'old house at home' required ample funds for its restoration. Having completed

his schooling at the ancient college of Aberdeen, he was sent to pass two years at Leyden, which had not yet wholly lost its ancient renown, that he might perfect his studies in the civil law.

Our province of Upper Canada being supposed to offer an open and unoccupied field to a clever lawyer, to whom an early return for the little capital invested in his education was a pressing object, young Grant sailed for that country in the autumn of 1775, and arrived at Quebec just before the critical period when it was threatened with a siege by the American general Montgomery, and when, on the death of that general, Colonel Arnold attempted to take it by a coup-de-main. There are several examples of eminent lawyers who have been previously distinguished in the military profession; "the same person," says an eloquent writer*, "may certainly, at different periods of life, put on the helmet and the wig, the gorget and the band, attend courts and lie in trenches, head a charge and lead a cause." It was reserved for *le Chevalier Grant*, however, to doff one head dress and don the other — to perform both duties, military and legal — on the same day. He assisted at the fortifications, and was active in the labours of a volunteer. When the alarm from invasion ceased, and the harassed province was restored to comparative tranquillity, his duties as a lawyer were scarcely less multifarious. He had left England before completing the requisite number of terms for a call to the bar, but was appointed, by the fiat of the governor, Attorney-General of Canada, an office of loftier sound than of real dignity or emolument. The preferment, for which indeed there were few competitors, was most happily bestowed, as none but first-rate talents could have extricated the administration of the laws from inextricable confusion. Strange to say, the municipal code, by which this conquered colony was to be governed, had not yet been decided. A proclamation of 1763, drawn up in the vague language of a soldier, provided for the administration of justice "*as near as might be*" according to the law of England. It was a matter of great and

* Mr. L. Adolphus in Lockhart's Life of Scott.

long-continued discussion whether the laws of England had thereby been generally introduced, in abrogation of the ancient municipal laws of the country. In a report made by the attorney and solicitor general, in 1766, little other effect was ascribed to this proclamation, than that of extending to the inhabitants of Canada the benefit of the criminal law of England, and those learned persons were of opinion that the English laws relating to the descent, alienation, settlements, and incumbrances of real estates, and to the distribution of personal property in case of intestacy, could not be considered in force in that country. The question, however, never received any judicial decision.

For eight years Mr. Grant continued to diffuse his legal knowledge and acumen through this chaotic mass, and then, sighing for a more ample arena and more worthy antagonists, returned to England. In 1787, in his thirty-third year, he was called to the bar by the benchers of Lincoln's Inn. His reputation as a colonial barrister had been divided from the metropolis by three thousand miles of Atlantic ocean, and the transit of intelligence was then remarkably slow. The quondam attorney-general of Canada, unknown beyond the circle of his profession, with a haughty consciousness of unappreciated desert, too proudly sensitive and reserved to win the captious favour of attornies — for the law,

> " Like woman, born to be controll'd,
> Stoops to the forward and the bold "—

during four long years of enforced silence and leisure, plodded his weary way, in singular contrast to a former active life, first through the western, and afterwards the home, circuit, without holding a single brief of his own. But though more absolutely forlorn than several of his great competitors, Mr. Grant's fate was far from peculiar. The future premier, Pitt, the future chancellor of Ireland, Mitford, the future chief commissioner Adam, and the future Master of the Rolls, might have met at the circuit-table, and been rarely interrupted by a summons to a consultation.

Mr. Grant appears to have been a pleased, if not active, participator in the *high jinks* of grand court. In an extract

from the Diary of Blair Adam, in Lockhart's Life of Scott, the chief commissioner concludes an account of their rival festive recollections with the remark, that "if Scott could describe, with inconceivable humour, their doings, when emerging from boyhood, Shepherd and I could tell of our circuit fooleries, as old Fielding, the son of the great novelist, called them — of the circuit songs which Will. Fielding made and sung, and of the grave Sir W. Grant, when a briefless barrister, ycleped by Fielding the Chevalier Grant, bearing his part in these fooleries, enjoying all our pranks with great zest, and who talked of them with delight to his dying day."

Uneventful as the life of an obscure barrister must be, for he is only called a practising barrister by courtesy, there is one point in his career, which to professional readers seems fraught with all the interest of romance — the little path opening through the mountain where no pass had been visible — the happy incident well improved, the lucky chance which unexpectedly befell, "the tide which taken at the flood led on to fortune." Void of stirring adventure as their days must be when toiling in the ranks, what legal reader can trace without some degree of emotion, as he may make their case his own, the sanguine ambition and buoyant confidence of the outset — the gradual unfolding of difficulties before unseen — the experience of tedious delays and heart-sickening disappointments, not seldom of severe personal sufferings and privations — at length the despairing resolution half-conceived by the stricken lawyer to abandon his thankless calling, and then, when all around appeared darkest, the sudden opportunity caught, and a speedy transition into the meridian of fortune and fame? There may be some truth in the complaint of a fastidious baronet*, that, after wasting years miserably in the noxious air of hot unwholesome courts, and listening for long weary days to an insufferable quantity of dull nonsense, success is at length secured by accident; but the chance is worth waiting for, and to every able and persevering lawyer this time will come, repaying him for all those perplexing impediments, which Charles Phillips so feelingly describes, "The

* Sir Egerton Brydges.

neglect abroad — the poverty perhaps at home — the frowns of rivalry — the fears of friendship — the sneer at the first essay — the prophecy that it will be the last — discouragements as to the present — forebodings as to the future — some who are established endeavouring to crush the chance of competition — and some who have failed, anxious for the wretched consolation of companionship."*

The "open sesamé" to Mr. Grant was an interview with the premier, at his request, as he was then preparing his bill for the regulation of the Canadas. The clear and enlarged manner in which the ex-attorney-general furnished Mr. Pitt with the fruits of his experience, caused that perspicacious minister to seek other opportunities of intercourse, and to intimate that if a gentleman so well versed in municipal law desired a seat in the House of Commons, a private borough would be at his disposal. He at once embraced the offer, and was returned for Shaftesbury to that important parliament which met in November, 1790. He was elected burgess for Windsor, through court influence, to the next parliament, and afterwards sat for Banffshire, till his final secession from political life in 1812.

His example and eminent success prove the futility of all abstract general rules. There is no precept more chorused by the voice of the profession, than the impolicy of a young lawyer, comparatively unknown, entering parliament, and a long muster-roll of legal names are enunciated, who have bitterly regretted the hour that they forsook their lawful wife the profession, for that fascinating but impoverishing mistress, politics. "Remember," was the cautious advice of an old stager, Granville Sharp, "if you should abandon your Penelope and your home for Calypso, that I told you the counsel given, in my hearing, at different times, to a young lawyer, by Mr. Windham and Horne Tooke, not to look for a seat till he had pretensions to be made solicitor-general."† The precept is, doubtless, marked by worldly wisdom, and savours of the shrewd common sense of those who gave it, yet was it in direct contradiction to the practical experience of the most

* Recollections of Curran.

† Sharp's Letters and Conversations.

successful lawyer in the House. That light was first kindled in St. Stephen's, which was afterwards reflected with such dazzling lustre on the oracle of Westminster Hall.

For some time after taking his seat, Mr. Grant seemed content with the condition of the pedarius senator, as if he had no higher ambition than to hear the debate, give his vote, and then depart in peace. But he was calmly awaiting the fittest opportunity for a triumphant essay: on the 15th of April he followed Windham — no slight adventure — in the debate respecting the armament against Russia, defending Pitt's private interference against the retention of Ockzakow, or Otchakov, — a town with whose very name and topography the greater part of the House were only imperfectly acquainted, and obliging the premier by his advocacy on a point where it was especially needed.

"Popular assemblies were likely to be corrupted in negotiations. The necessary consequences of negotiations in the hands of numerous bodies, from the popular assemblies of Athens to the Polish diet, ever had been, and ever would be, the publication of what ought to be secret; intrigues, dissensions, cabals, and the interposition of foreign influence." . . . .

"An honourable baronet had said, that the instant the country was put to any expense, the House was bound to inquire for what purpose, and he had given a sort of challenge to the House, and had defied any gentleman to produce a single instance where they had been called upon for supplies without previous explanation. It so happened that he recollected a case precisely in point: on the 17th of March, 1718, the king sent a message to the House, stating in the most general terms possible, that he was carrying on several negotiations of the utmost concern to the welfare of these kingdoms and the tranquillity of Europe, and calling upon the House for supplies to enable him to carry them on with effect. In that case, without any information farther, the House had voted supplies; but no person thought of withholding the necessary confidence from the servants of the crown."

Such passages as these will present a very faint and feeble resemblance of the great orator. There is the stature indeed (to draw an artist's illustration), but where is the grace? the

shape, but where is the mien? the features, but where is the eye? The art of reporting has improved in exact proportion as the necessity for its exercise appears to be diminished; however much the reader may lament over the shapeless fragments and scanty relics, all that is left to him of former eloquence, he would probably prefer their Roman names and curt paragraphs, to the effusions of modern senatorial garrulity.

In the following month Mr. Grant opposed Fox on the Canada Government Bill, and explained the Code Marchand, bringing both his civil knowledge and practical experience to bear upon the critical question, whether the provinces of Canada should enjoy an English or a French constitution. When Mr. Whitbread, in February 1792, renewed his motion respecting the armament against Russia, Mr. Grant's rank and consideration in the House had so increased, that he followed Mr. (the late earl) Grey in the debate, no unworthy successor, certainly not "impar congressus Achilli," and was himself replied upon by Windham, who said it was a pleasure to follow the learned gentleman, notwithstanding his great ability, because he put the question on ground on which it could be fairly met. His apt and pertinent illustration from Grecian history called forth an elaborate explanation from the mighty leader of opposition, and elicited deserved applause.

"He was reminded of the history of Philip of Macedon and the Athenians, and particularly his famous letter to them, in which he expressed his sentiments of justice and moderation, and in which he gave assurances of his good disposition to the liberty of Greece; but solicited some small towns, which the Athenians granted, many of them saying they were so obscure, and of so little value to them that they did not know even their names. 'True,' said Demosthenes afterwards, 'you did not know the names of these small towns, but they were keys to provinces, to which Philip will find his way, and endanger your liberty.' Philip passed from town to town, and from province to province, until at last he had the dominion of all Greece. So in this the empress might profess moderation, and add fortress to fortress, until she became mistress of the Mediterranean and Egypt. At the same time he could see

distinctly, that important as Ockzakow might be, it might not be worth a war under the peculiar circumstances with which a war must have been carried on against Russia. With regard to the right honourable gentleman having put the country to the expense of an armament, purposely to keep Ockzakow out of the hands of Russia, and yet having given it up, that was by no means a matter that might not be amply justified. Many points had been again and again given up by negotiators, not only after armaments had been set on foot, but after battles had been fought, and victories actually obtained. Instances might be quoted in almost every reign, wherein objects had been relinquished that were deemed of great importance at first, and to obtain which great national expense had been incurred."

As the closing year grew dark with the French revolution, Mr. Grant's voice was potential for war. When, in December, 1792, Mr. Fox moved for an embassy to Paris, Mr. Grant rose after Whitbread, and maintained, with great learning, the right of Holland to control the navigation of the Scheldt, and the arrogance of the interference of France, which proved only their rooted comtempt of existing order and moral obligation: — "They had not conquered the Netherlands by their own declaration, they had only restored the sovereignty of the people! Should France then be suffered to arrogate to itself the umpirage of all disputes in Europe? Even were we to settle the dispute with the present executive council, their successors, armed with the natural imprescriptible rights of man, would deny their right to settle it. 'What!' they would exclaim, 'bind by treaty the rights of man! It is impossible, nature forbids it, right is paramount to treaty. Those with whom you negotiated exceeded their power, and betrayed their constituents, and the treaty is therefore void.'"

This passage forms a mere torso of the pleader's eloquence, but the interest of it has not passed by; it may yet be referred to as an earnest apology of the war, and deserves to be incorporated in the records of national wisdom. Well might the reserved premier, who rarely complimented, praise the able and luminous point of view in which his opinions had been

placed by his learned friend. It has been said by the greatest living model of parliamentary eloquence (Lord Brougham) that, with the exception of Mr. Pitt, perhaps no man had ever greater personal sway in the House than Grant. The following is that nobleman's estimate of his power as an orator: —

"In parliament he is unquestionably to be classed with speakers of the first order. His style was peculiar; — it was that of the closest and severest reasoning ever heard in any popular assembly; reasoning which would have been reckoned close in the argumentation of the bar, or the dialectics of the schools. It was from the first to the last, throughout, pure reason and the triumph of pure reason. All was sterling, all perfectly plain; there was no point in the diction, no illustration in the topics, no ornament of fancy in the accompaniments. The language was choice—perfectly clear, abundantly correct, quite concise, admirably suited to the matter which the words clothed and conveyed. In so far it was felicitous, no farther; nor did it ever leave behind it any impression of the diction, but only of the things said; the words were forgotten, for they had never drawn off the attention for a moment from the things; these things were alone remembered. No speaker was more easily listened to; none so difficult to answer. Once Mr. Fox, when he was hearing him with a view to making that attempt, was irritated in a way very unwonted to his sweet temper by the conversation of some near him, even to the show of some crossness, and (after an exclamation) sharply said, 'Do you think it so very pleasant a thing to have to answer a speech like *that*.' The two memorable occasions on which this great reasoner was observed to be most injured by a reply were in that of Mr. Wilberforce quoting Clarendon's remarks on the conduct of the judges in the Ship Money Case, when Sir William Grant had undertaken to defend his friend Lord Melville; and in that of Lord Lansdowne (then Lord Henry Petty), three years later, when the legality of the famous orders in council was debated. Here, however, the speech was made on one day, and the answer, able and triumphant as it was, followed on the next. His rare excellence was no doubt limited in its sphere; there was no imagination, no vehemence, no declamation, no wit; but

the sphere was the highest, and in that highest sphere its place was lofty. The understanding alone was addressed by the understanding, the faculties that distinguish our nature were those over which the oratory of Sir William Grant asserted its control."*

Upon such an eloquent champion of the best, and able defender of the least popular, measures of government, legal honours must overflow. In 1791, he was appointed a commissioner with Sir John Nicholl to report on the laws of Jersey — a sure, though slight, indication of ministerial favour. Higher preferments speedily followed. In 1793, he was appointed one of the judges for Carmarthen, Pembroke, and Cardigan, a sort of mezzo termino between the front row of the counsel and the bench. The smiles of a prime minister recommended the judge to the favour of parliamentary agents. His profound acquaintance with the principles of the civil law, and the lucid reasoning with which he argued Scottish appeals at the bar of the House of Lords, drew down upon him the favourable notice of the Chancellor —

> " That rugged Thurlow, who, with silent scowl,
> In surly mood, at friend and foe would growl : "

he is said to have marked the logical utter-barrister as a future chancellor. The prophecy would be worth more, were it not so profusely hazarded, and so often remembered to have been spoken, after the event. A more important mark of esteem was the grant of a silk gown in 1795, by Lord Loughborough, given at a time when his amount of professional business scarcely warranted the distinction, accompanied with a recommendation, to which the king's counsel found no difficulty in acceding, that he would in future confine his practice to the Court of Chancery. His number of clients increased steadily after this promotion, and fully entitled Mr. Grant, apart from court favour, to those honours which, when once in the path of promotion, crowded rapidly upon him. In the same year he was chosen Solicitor-General to the queen; in 1798, Chief Justice of Chester, and in 1799, upon the ennobling of Sir

John Scott and his transfer to the Common Pleas, Solicitor-General. His two years of office were distinguished by only one important state trial — that of Hadfield for shooting at the king. Sir John Mitford having opened the case, it became the duty of Sir William Grant to reply, had not the eager humanity of Lord Kenyon interposed to stop the trial, upon that most ingenious and eloquent plea of monomania, which Erskine set up. We should have much desired a record of the opinions of the Solicitor-General upon that interesting and mysterious theme, especially as he is known to have more than doubted the soundness of the conclusion at which that excellent judge arrived.

Husbanding his strength in parliament for great occasions, Sir William Grant supported the address of thanks, in 1801, with an energy of eloquence to which the reporters have for once done justice. It would be unfair to his memory not to transcribe a portion of the vehement scornful sentences which he poured forth on the disheartening counsels of the opposition, and the abject *Gallicism* of their leader, Mr. Grey.

"If we are in earnest in wishing that the country may display an energy proportioned to the difficulties which it has to surmount, what is the conduct which as rational and consistent men we ought to hold? Ought we deliberately to endeavour to disappoint our own wishes — to lay plans for frustrating our own hopes — to labour to dishearten and disunite those on whose union and courage our safety wholly depends? And yet is not this the preposterous course which the honourable gentleman has been pursuing? Has he not held out to our view the most gloomy pictures of our situation and resources? Has he not exaggerated every difficulty and magnified every danger? Has he not drawn such a comparison between the power of the enemy and that of this country, as almost to exclude the hope of a successful issue to the contest in which we are engaged? In the name of common sense, what can gentlemen propose or promise to themselves from this strange application of their eloquence? Supposing they should completely succeed in persuading the people to distrust their government, their strength, their resources, and to admire and dread the enemy with whom

we have to contend, I wish to know what advance they think they will have made towards bettering our condition, towards increasing our strength, towards improving our security? What should we think of the commander of an army, who, on the eve of an engagement, should employ all his eloquence to dispirit his men, who should inculcate cowardice, and propagate dismay, who, by magnifying the powers of the enemy and the danger of the conflict, should incite his troops to flight or to submission? We should say that such conduct was the extreme of treachery or folly. For God's sake, let no part of this community expose itself to either imputation. . . .

"I wish to God that all the upper classes of life would display the same sober fortitude that has characterised the lower orders of the community. They have real and serious evils to struggle with and to endure. There are those who are obliged to task their imagination for subjects of complaint, which, if they would confess the honest truth, never broke in upon one moment of their repose, or robbed them of one particle of their enjoyments; yet, not content with giving vent to their own mock lamentations, they are angry that those who really suffer should show any degree of patience under their sufferings, and should not be ready to break out into insurrection against that government which is exerting its utmost for their relief. But in spite of excitement and example, the British people still retain their ancient characteristics; they have not yet been prevailed upon to clamour for the ruin and disgrace of their country under the vague and deceitful name of peace; they would not, I am persuaded, purchase a relief from the distresses of the moment by the sacrifice of their country's honour; they would not consent to become tributaries to France, even if France should undertake to dole out to them a daily allowance of bread for the remainder of their lives. Propose that relief to them, on those terms, and I am certain they would refuse to sell, for a mess of pottage, the birthright of their independence."

The constitution being saved, and the country, though still firm and patient, growing utterly weary of a war whose interminable disasters on the Continent outweighed our triumphs on the ocean, Mr. Pitt determined to resign, that other minis-

thers might traffic for and barter that peace to which, as inglorious, he could not teach his lofty spirit to submit. With his retirement important law changes were interwoven, amongst them the transference of Sir Pepper Arden, with a title, from the Rolls to the chief seat in the Common Pleas. Sir William Grant, with the unanimous approval of the profession, was, 30th May, 1801, appointed his successor. In the last six years he had been wearing his legal honours as nobly as he won them, arguing Thelluson's case, in which he rebuked the cravings of posthumous avarice, and other important suits in Chancery, with a range and clearness of reasoning which riveted universal attention. Those best initiated in the mysteries of law-craft looked forward with sanguine hope to the career of the new judge, and even the greatest enthusiasts were not disappointed.

The bubble of peace soon burst, and Sir William Grant was not permitted to retire uninterruptedly to the tranquil duties of the bench. By a somewhat curious coincidence, the learned Master of the Rolls found himself once more constrained to diversify the labours of Themis with those of war. The bulletin of his exploits, which consisted in constant drilling, is best told in the words of one of his company, the amusing anecdotist, Mr. Espinasse.

"The Lincoln's Inn corps was formed when all ranks of the people were arming, not wholly composed of members of the bar, or attornies, but admitted into its ranks every description of respectable persons in any way connected with the profession; of this description were the officers of the Court, and the stationers and their clerks employed in professional business in the neighbourhood of the inns of Court. Sir William Grant, then Master of the Rolls, was chosen to command us; he was selected for that honourable post, it being understood that he had been attorney-general of Lower Canada, and carried arms at the siege of Quebec when it was invested by the American general, Montgomery. He took the title of major-commandant; and our other officers were, the Honourable Henry Legge, Templeman, and Pitcairne. We mustered about seventy, and numbered among us Lords Redesdale and Ellenborough, Sir Vicary Gibbs, and Dampier; the heir-

apparent of Lord Kenyon also deigned to fall into the ranks. The members of the bar usually formed the front rank, though neither the best looking soldiers nor best drilled recruits. Dampier was always the right hand file of the line; he stood (to use a soldier's phrase) six feet two or three inches in his stocking feet, and stepped like a castle. Lord Redesdale was always my left hand file, and was one of the most regular at the drill of any of the company."

Mr. Espinasse tells an amusing story of one recruit, a Mr. Stebbing, who had been accustomed to sit as a commissioner of bankrupts in a cocked hat, and was compelled to quit the regiment by the commandment's regulations as to dress. "The hats of the Lincoln's Inn corps were round, surmounted with black bearskin across the crown. A tall red and white feather, composed of the hackles of a cock, rose in the front of it, and presented a martial and grenadier-like appearance. But all that military gaiety had no charms for Stebbing; he could not be reconciled to a round, but pined for his pinch; he never on coming to the parade omitted his malediction against the bad state of Sir William Grant, and the martial ornament, with which he had chosen to furnish his head. His regrets became insupportable. Notwithstanding the talents of our commanding officer, and the rank of many of the privates, our military character was not splendid, and we merged into the Law Association, commanded by Lord Erskine."

Before accompanying the Master of the Rolls, a sort of judge-martial, to his more peaceful, enduring, and triumphant labours on the bench, it may be well to return with him for a short time to the House of Commons, of which he still continued the grace and ornament. The first great speech made by the learned judge, contrary to what might have been anticipated from his warlike associations, was in defence of the definitive treaty of peace, in the course of an earnest apology for which he asserted, with less than his wonted prudence, "that the possession of the West India Islands, so far from increasing the means of this country, brought with it rather weakness than strength, and divided our means and our resources." This unexpected ebullition of liberalism elicited

a singular offering of gratitude from the eccentric hermit of Queen Square Place, Jeremy Bentham. Through the medium of a brother barrister, he thus forwarded his offering:—

"Dear Wilson, Queen Square Place, May 22. 1802.

"A-rummaging among some old lumber, out came a parcel of copies of a little tract, which I believe you saw at the time of its being first hatched. I don't know whether you have e'er an one. I send two, one of which you will keep or burn as you think fit, the other you may send to your neighbour the Master of the Rolls (Sir William Grant) in your own name, or in my name, or in no name at at all—as you please. Reading t'other day the account in The Times of his speech about the peace, he seemed to me an animal sui generis amongst lawyers, and indeed amongst parliamentary men. I wish he had the Chancellor to snuff candles for him, or do any thing else, if there be any thing else he is fit for. The notions of the Master about colonies approach nearer to what I call reason than those of almost any body else I have met with. I did not know the Millennium had been so near.

"P. S. I will sell you as many as you have a mind for at a halfpenny a piece, without insisting on ready money. I mean of the colony pamphlet."*

A few days later Mr. Wilson announced the Master's acceptance of a production, which its quaint-spoken author seemed to value so lightly:—

"Dear Bentham, Lincoln's Inn, Thursday, 27th May.

"I have given your pamphlet to the Master of the Rolls, and told him you sent it him in consequence of his speech, because you were pleased with his notions about colonies. He is obliged to you, and thanks you; but he is a cold and silent man, and, whether he likes the pamphlet or not, neither you nor I will ever know."

All who remember the high Conservative notions of the grave judge, can imagine the mingled disgust and dismay, with which he must have read the revolutionary pleasantries, and self-condemning plaudits, of his whimsical and ill-assorted ally.

His extraordinary favour with the kind-hearted Utopian

* Bentham's Remains.

must have been evanescent; the Tory judge had no passion for changes and reforms. He opposed the bill for disfranchising Aylesbury as a bill for the encouragement, not for the punishment, of bribery and corruption.

"Contrary to every principle of law, it separated a man's interest from his duty, because there was no distinction made between those who committed, and those who resisted, acts of corruption. If it should happen that all the houses in Aylesbury were to fall down except six, undoubtedly the six householders, whose houses stood, would be the electors of Aylesbury; for a much stronger reason he thought that those burgesses, who had not taken bribes, ought to be the electors, and should not have their franchise deteriorated by letting in a number of strangers to share with them."

The impression made upon young and sensitive advocates by the parliamentary eloquence of the Master of the Rolls, is well described in the diary of the late lamented Horner. He notes down, in 1802, his wish to acquire appropriate and elegant language, and adds, "the other intellectual acquisition I have in view, is a ready and comprehensive talent of reasoning; one's ambition is often excited by circumstances that present themselves fortunately, and the manner of the present Master of the Rolls, as a legal reasoner, has given me an idea of an excellence which it may be practicable to acquire. 'Il y a des secrets dans l'art de penser comme dans tous les autres arts' is a maxim which I read long ago in Leibnitz, and which from that moment has perpetually recurred to me." He writes a glowing report in the following year, 21st February, 1805, to his friend J. A. Murray, of a debate on the Spanish papers:—

"There was one extraordinary oration that night, Sir William Grant's, quite a master-piece of his peculiar and miraculous manner; conceive one hour and a half of syllogisms strung together in the closest tissue, so artfully clear that you think every successive inference unavoidable, so rapid that you have no leisure to reflect where you have been brought from, or to see where you are to be carried, and so dry of ornament, or illustration, or refreshment, that the attention is stretched—stretched—racked. All this without

a single note; and yet, while I acknowledge the great vigour of understanding displayed in such performance, I have a heresy of my own about Grant's speaking; it does not appear to me of a parliamentary cast, nor suited to the discipline of a political assembly."

The many improvements which Sir S. Romilly sought to engraft upon our law of real property, nearly the whole of which have been since adopted by the legislature, encountered Sir William's powerful and persevering resistance. He would not acquiesce in his equitable bill for making the freehold estates of persons who die in debt, assets for the payment of their simple contract creditors: —

"Parties by their own act decided the terms of the contract. The creditor who trusted to the simple contract, knew that he was not in the same situation as if he had a bond; and he who had a bond, knew he was not in the situation of one who had a mortgage. He could see no reason why the law should put the creditor in a situation which he did not bargain for. There did not appear to him to be either necessity for the measure, or any utility in it. It had been said, that it would be unjust that the heir of an estate should be living in affluence, whilst the creditors of his predecessors were left to starve; but would it not be also an injustice, if the heir to an estate were to be deprived of his birthright through the improvidence of his predecessor, and be left in the greatest possible distress, perhaps in insolvent circumstances, whilst he was paying the debts of another person's contracting? Allowances should be made for the necessary fictions and peculiarities which were adopted in law proceedings: it might be reckoned absurd, for instance, that in the case of specialty or common contract debts, the addition of a bit of wax in the one case, whilst in the other there was nothing but the name subscribed, should give the one such superiority over the other, that the one would be for the most part paid, whilst the other would in many instances be left unpaid. But such were the established distinctions, which were sanctioned by the laws of the realm, and no evil was found to result therefrom. There had been two attempts to graft a measure of the nature now before the

House upon the English code, the one by the late Lord Kenyon, and the other by another most eminent lawyer, Mr. Ambler, but both these luminaries of the law, upon mature deliberation, abandoned the measure, as being unsuited to the genius and manners of the people."

Canning compared the measure to a law which had been introduced for the regulation of country bankers, by making their estates liable to their debts; Lord Kenyon had observed upon that measure, that it would be necessary every banker should have a map of his estate, and catalogue of the encumbrances on it hung up in his house. Sir Samuel Romilly, then Solicitor-General, replied with as much asperity as if he had sustained some personal wrong:—

"He was decidedly of opinion, that to exempt an estate from the payment of debts contracted by its late possessor, was a most flagrant act of injustice. He was surprised there were those who maintained that such an exemption was just, and somewhat concerned, that among them was the only member of that House who was invested with the robes of magistracy."

The passages in Romilly's Diary, in which that great lawyer and philanthropist notes down, at the moment, his own vivid impressions of the debate, are full of interest; and, whilst they mark the extreme sensitiveness of both antagonists, read an admirable lesson to senators of the necessity for charitable judgment, and for mutual forbearance with one another.

"18th February, 1807.—The second reading of the bill to make freehold estates pay debts came on to-day. The Master of the Rolls, to whom I had sent a copy of the bill before I moved for leave to bring it in, and to whom I mentioned my intention before I sent him the copy, and who had never stated any objection to it whatever to me, opposed it on the ground that there was no pressing necessity for the measure—that a simple contract creditor not having stipulated that the debt should be paid by the heir of the debtor, there was no reason to give him what he had not contracted for, and that as the heir was not affected by it, it was unjust to give it him—that it was contrary to the Statute of Frauds,

because it would affect lands by means of parol evidence, without any writing, and on some other grounds of equal solidity. He and Canning did not divide the house."

The bill was finally rejected on the third reading, by 69 to 47; on which its author writes this note: —

"18th March. — The principal opposer of the bill was the Master of the Rolls, who, in a long, studied, and elaborate speech, exerted all his powers to throw it out. His arguments were all technical, and such as I could not have conceived could have satisfied himself. He said, that justice in such a case was entirely out of the question: expediency was all that was to be considered. He spoke of the injury that would be done to the innocent heir at law, and of the heir's right to the real property of his ancestors as that which ought not to be disappointed by the claims of creditors. He talked, too, of the dangers of innovation, of the mischief of enacting any law without considering all the consequences to which the principle on which the law proceeded would lead. My reply to him was, perhaps, in some parts of it, more severe than it should have been; amongst other things I said, that 'I was surprised and lamented to hear some of the propositions which he had stated, and the rather, as coming from one who was the only person that appeared amongst us invested with the robes of magistracy.' 21st. — I received a letter to-day from the Master of the Rolls, complaining of my conduct towards him in the late debate, and I have written him an answer, which I shall send to him, apprising him what it is that I think I had great reason to complain of in his conduct, and what I meant certainly to resent. He has used me most unkindly, and, I think, has acted in a manner unworthy of himself; but I have no desire to be at enmity with him, or indeed with any man."

There can be no doubt that the judge's inveterate antipathy to all innovations, and his lurking suspicion of some evil, then unforeseen, that would assuredly arise from any change in the ancient landmarks of the law, exposed him, with some show of reason, to the resentment of grave, and the irony of satirical, reformers. A barrister is so called (a man of spleen might say) *à barrando*, from barring against reformation the

entrances of the law. It would be as good an etymology as many a one of Lord Coke's, and entirely in his style and taste.* Lord Brougham animadverts, on this occasion, "upon a discrepancy in the purely intellectual picture, a want of keeping, something more than a shade. The commanding intellect, the close reasoner, who could overpower other men's understanding by the superior force of his own, was the slave of his own prejudices to such an extent, that he could see only the perils of revolution in any reformation of our institutions, and never conceived it possible that the monarchy could be safe, or that anarchy could be warded off, unless all things were maintained upon the same footing on which they stood in early, unenlightened, and inexperienced ages of the world. The signal blunder, which Bacon long exposed, of confounding the youth with the age of the species, was never committed by any one more glaringly than by this great reasoner. He it was who first employed the well-known phrase of 'the wisdom of our ancestors;' and the menaced innovation, to stop which he applied it, was the proposal of Sir Samuel Romilly to take the step of reform, almost imperceptibly small, of subjecting men's real property to the payment of all their debts. Strange force of early prejudice; of prejudice suffered to warp the intellect, while yet feeble and uninformed, and which owed its origin to the very fault that it embodied in its conclusions — the making the errors of mankind in their ignorant and inexperienced state the guide of their conduct at their mature age, and appealing to those errors as the wisdom of past times, when they were the unripe fruit of imperfect intellectual culture."† The bantering pleasantry of the Rev. S. Smith, played off its firework also against the supposed wisdom of our forefathers:—"Can such young, ignorant, inexperienced persons, as our ancestors necessarily were, be expected to have understood a subject as well as those who have seen so much, lived so much longer, and enjoyed the experience of so many more centuries?"

However averse to civil changes, the humanity of Sir William Grant induced him to give a warm and effective

* Works of J. Bentham. † Lord Brougham.

support to another favourite measure with Sir Samuel Romilly, his amelioration of the criminal code. The statute law was then rife with capital punishments, and its prompt despatch with a criminal was to hang him.

> " ——— huic atro liquuntur sanguine guttæ,
> Et terram tabo maculant."

With his usual sound judgment and charitable wisdom, the Master of the Rolls supported Romilly's Privately Stealing Bill (abolishing the punishment of death for stealing in a shop, where the article stolen amounted to one shilling).

" Even the sanctity of the jurymen's oath was sometimes obliged to yield to the feelings of nature, and they were guilty of what had sometimes been called a pious perjury to acquit a prisoner. The fault was in the law as it now stood, for every law must be faulty which acts so decidedly against the feelings of the whole community."

With the reserve peculiarly becoming in a judge, the Master of the Rolls never interfered in political discussions but on those state occasions 'big with the fate of' ministers, when the crisis exacted an expression of opinion from each patriotic citizen, and the difficulty appeared to be worthy of his attempt at solution. At such times he spoke out boldly, fully, freely, his high Tory tenets. When " All the Talents," after their dismissal from office in April 1807, appealed to the House, and a motion was made for an address to the crown, that the House had seen with the deepest regret the late changes in his majesty's councils, the Master of the Rolls, at five o'clock in the morning of a protracted debate, opposed the motion with convincing eloquence, and confuted Windham's ridicule of exploded notions with regard to any invasion of the prerogative.

" Never, until now, had a minister come down to complain of his sovereign. Lord Somers was removed without a shadow of complaint. Did he come down to parliament to institute an investigation of the cause? When the celebrated Whig administration was removed by Queen Anne, did they breathe a whisper in either House of Parliament against their

royal mistress? If a minister were to reserve to himself the right of inquiring into the cause of his removal, he would approximate his situation to that of a judge, or any other officer for life. Of a change in administration parliament had no constitutional knowledge, and on such change could found no inquiry."

So completely at variance was the Master of the Rolls with the late ministry, that during their continuance in office he withdrew himself entirely from the Courts of Prize Appeal, over which he had previously presided, assisted by Sir William Wynne, deeming his attendance a voluntary mark of respect to the government, which he felt no inclination to pay. He did not again interpose till the period of the charges against the Duke of York, when the House seemed likely to run riot in their horror of supposed corruption, and lent too credulous an ear to the bland yet bitter falsehoods of Mary Anne Clarke. His voice was then raised in a tone of judicious caution, not unmixed with irony: "A Roman tribunal had refused to take even the testimony of Cato without the sanction of an oath, and certainly they had had persons at their bar not much akin to the Roman or Athenian virtue.* The reason why it was not thought necessary to give the House of Commons the privilege to administer an oath was, that their inquiries were supposed to be directed to ascertain the grounds of accusation preparatory to the institution of a subsequent trial."

After a silence of two years, Sir William Grant spoke for the last time — in favour of the resolutions respecting the Regency, avowing his deep reverence for the author of the resolutions of 1788. He resumed his seat amid tumultuous cheering. It was in vain that Sheridan in reply exerted his winning powers of pleasantry, and ridiculed the phantom of Lord Thurlow, supported by the ghost of Mr. Pitt, which the Master of the Rolls had conjured up. He could not disenchant his hearers from their impression of a speech to which, according to his own confession, they had listened

"With breathless silence and a dead repose."

* Why Athenian? The lady seems to have been akin to the Aspasias and Phrynes of Athens.

At the dissolution of parliament in 1812, the greatest and most approved forensic orator since the days of Murray withdrew from political life. He has had one successor of almost equal eloquence and consideration, Sir John Copley, with whom the race of Masters of the Rolls in the House of Commons seems likely to expire. There still runs a strong undercurrent of prejudice against any judge being a member. Their exclusion may be deprecated, as tending to lower the standard of debate, and detract from the personal authority of members. Sir William Grant is an eminent example how much practical benefit their presence may accomplish.

Of his merits as a judge it is difficult to speak but in superlatives — to use any other terms, even at the risk of flattery, than those of unalloyed encomium. Learning the most profound, sagacity almost intuitive, a power of analysis most logical and searching, a diction perfect in its aptness, entire calmness, patience, and courtesy, contributed to the varied attributes of a judge rarely equalled, never surpassed. His popularity with the profession was unbounded. Almost every day supplied some new offering to his praise, or token of homage, like the rich bouquet of flowers placed each morning on the Chancellor's cushion. The lover's panegyric on his mistress is not more lavish than the lawyer's tribute to his model of judicial excellence. Two of these in all their freshness merit selection: the first by the late Charles Butler, the second by Lord Brougham.

"The most perfect model of judicial eloquence which has come under the observation of the reminiscent is that of Sir William Grant. In hearing him, it was impossible not to think of the character given of Menelaus by Homer, or rather by Pope, 'He spoke no more than just the thing he ought.' But Sir William did much more; in decompounding and analysing an immense mass of confused and contradictory matter, and forming clear and unquestionable results, the sight of his mind was infinite. His exposition of acts, and of the consequences deducible from them, his discussion of former decisions, and showing their legitimate weight and authority, and their real bearings upon the point in question, were above praise; but the whole was done with such admirable ease and simplicity,

that, while real judges felt its supreme excellence, the herd of hearers believed that they could have done the same. Never was the merit of Dr. Johnson's definition of a perfect style, 'proper words in proper places,' more sensibly felt than it was by those who listened to Sir William Grant. The charm of it was indescribable; its effect on the hearers was that which Milton describes, when he paints Adam listening to the angel after the angel had ceased to speak. Often and often has the reminiscent beheld the bar listening at the close of a judgment given by Sir William, with the same feeling of admiration at what they had heard and the same regret that it was heard no more!" With the alteration of a word, the lines of Sir Walter Scott upon Thomas the rhymer would sketch the scene: —

> "There paus'd the voice; its lingering sound
> Died slowly on the ear,
> The silent *bar* still bent around,
> For still they seem'd to hear."

When we think of the dark little Court almost hidden by Chancery Lane, in which Sir William Grant pronounced at night his decisions, and picture to ourselves the forlorn group of jaded counsel and anxious clients, expecting the solution of an obscure clause in a will, or whether the testator's effects should go into hotchpot, we cannot but marvel at the buoyant fancy of the old conveyancer, soaring to the raptures of Milton's Paradise, and instituting a comparison between two things so dissimilar as the wigged man of law, and Adam and the angel.

The eulogy of the late Chancellor, if not quite so imaginative, is equally fervid. After commentating on the comparative obscurity of the Master of the Rolls when raised to the bench, he adds: —

"The genius of the man then shone forth with extraordinary lustre. His knowledge of law, which had hitherto been scanty, and never enlarged by practice, was now expanded to whatever dimensions might seem required for performing his high office; nor was he ever remarked as at all deficient, even in the branch most difficult to master without forensic habits, the accomplishments of a case lawyer, whilst his familiarity with the principles of jurisprudence, and his knowledge of

their foundations, was ample, as his application of them was easy and masterly. The Rolls Court, however, in those days, was one of comparatively contracted business, and although he gave the most entire satisfaction there, and in presiding at the Privy Council in prize and plantation appeals, a doubt was always raised by the admirers of Lord Eldon, whether Sir William Grant could have as well answered the larger demands upon his judicial resources, had he presided in the Court of Chancery. That doubt appears altogether unfounded.

"He possessed the first great quality for despatching business (the *real* and not *affected* despatch of Lord Bacon), a power of steadily fixing his attention upon the matter before him, and keeping it invariably directed towards the successive arguments addressed to him. The certainty that not a word was lost deprived the advocate of all excuse for repetition; while the respect which his judge inspired checked needless prolixity, and deterred him from raising desperate points, merely to have them frowned down by a tribunal as severe as it was patient. He had not indeed to apprehend any interruption; that was a course never practised in those days at the Rolls or the Cockpit; but, while the judge sat passive and unmoved, it was plain that, though his powers of endurance had no limits, his powers of discriminating were ever active, as his attention was ever awake; and as it required eminent hardihood to place base coin before so scrutinizing an eye, or tender light money to be weighed in such accurate scales as Sir William Grant's, so few men ventured to exercise a patience, which yet all knew to be unbounded. It may indeed be fairly doubted whether the main force of muscular exertion, so much more clumsily applied by Sir John Leach in the same Court to effect the great object of his efforts — the close compression of the debate — ever succeeded so well, or reduced the mass to as small a bulk, as the delicate hydraulic press of his illustrious predecessor did, without giving the least pain to the advocate, or in any one instance obstructing the course of calm, deliberate, and unwearied justice.

"The Court in those days presented a spectacle which

afforded true delight to every person of sound judgment and pure taste. After a long and a silent hearing—a hearing of all that could be urged by the counsel of every party—unbroken by a single word, and when the spectator of Sir William Grant (for he was not heard) might suppose that his mind had been absent from a scene in which he took no apparent share, the debate was closed—the advocate's hour was passed—the parties were in silent expectation of the event—the hall no longer resounded with any voice — it seemed as if the affair of the day, for the present, was over, and the Court was to adjourn, or to call for another cause. No! The judge's time had now arrived, and another artist was to fill the scene. The great magistrate began to pronounce his judgment, and every eye and every ear was at length fixed upon the bench. Forth came a strain of clear unbroken fluency, disposing alike, in most luminous order, of all the facts and of all the arguments in the cause; reducing into clear and simple arrangement the most entangled masses of broken and conflicting statements, weighing each matter and disposing of each in succession, settling one doubt by a parenthetical remark, passing over another difficulty by a reason only more decisive that it was condensed, and giving out the whole impression of the case in every material view upon the judge's mind, with argument enough to show why he so thought, and to prove him right, and without so much reasoning as to make you forget that it was a judgment you were hearing, by overstepping the bounds which distinguish a judgment from a speech. This is the perfection of judicial eloquence, not avoiding argument, but confining it to such reasoning as beseems him, who has rather to explain the grounds of his conviction, than to labour at convincing others; not rejecting reference to authority, but never betokening a disposition to seek shelter behind other men's names for what he might fear to pronounce in his own person; not disdaining even ornaments, but those of the more chastened graces, that accord with the severe standard of a judge's oratory. This perfection of judicial eloquence Sir William Grant attained, and its effect upon all listeners was as certain and as powerful as its merits were incontestable and exalted."

Other testimonies might be added, especially the graceful eulogy of the late Mr. Miller, in his Treatise on Legal Reforms; but as even this glowing tribute only repeats the same sentiments in a different form, it might weary by repetition. Unfortunately, from the technical nature of the subjects with which they deal, the intrinsic merits of the judgments, as compositions, are sealed to all but professional readers; their consummate art and perfect ease, every hue of language in its proper gradation, every word in its fitting place, the thoughts and diction forming as it were tones in the general harmony. The compliment of a Scottish judge to the argument of a clever lawyer might be applied to each of these judgments. "You have done like an able mathematician—thrown out all the useless quantities, and given us only the equations." In the judgments of Sir William Grant, precision and accuracy of language seem to follow as a natural consequence from justness of reasoning, as health and symmetry produce beauty. As models of judicial eloquence and perfect specimens of reasoning, they will always be valuable, though sometimes inapplicable to the circumstances of the case, and the state of the law in which they were delivered.*

His total disregard of every art to captivate public favour or attention — his lofty, but unpretending integrity and independence — the singularly collected and unprepossessed mind he brought to the examination of every subject—the silent and unremitting attention which he paid to every argument which was urged before him—the admirable medium he observed between dilatoriness and precipitation in the despatch of business — and the clearness, strength, and comprehensiveness of reasoning by which his judgments were supported — all conspired to invest his judicial conduct and demeanour with that air of severe and commanding intelligence, which none who witnessed can forget. One extract must suffice as a specimen. It is from his judgment in Purcell v. M'Namara, 14 Ves. 113, in which the Master of the Rolls, assisting Lord Erskine, states his reasons for setting aside certain deeds of conveyance, which a gentleman of consideration, a Mr. M'Namara,

* Law Review.

had most improperly induced some ladies to make in his favour.

"The defendant states, that he obtained from them a deed, the effect of which was, that it depended absolutely upon his pleasure whether they should ever afterwards eat a morsel of bread that should not be the gift of his charity. They by that deed convey to him all the interest they had in the Tortola estate, and any other estate, if any other they had; they assign to him their legacies, which during their brother's life were their only means of subsistence; and enter into personal covenants for payment to him, not merely of any debt of their own contracting, not of a definite debt of any person's contracting, but for payment to him of all sums by him before advanced, or which he should at any time afterwards advance to John Purcell and his sisters, to all, any, or either of them; and the written acknowledgment of any one of them was to be conclusive against all.

"Consider what proportion the brother's debt bore to that of the sisters, supposing them, in 1780, to have owed the sum which was said to be due from them to the defendant M'Namara in November 1783. The brother's debt was upwards of twenty to one. Consider his habits of expense, as represented by the defendant himself. What was this, but converting at once the whole fortune of these ladies into a fund to defray the past and supply the future extravagance of that brother. All the prudent care of their father was at once defeated. All the property, by him so anxiously withdrawn from the power of his son, is at once delivered over to the heedless and incorrigible prodigality of this young man. All that the sisters had in possession, in expectancy, even the sole provision for their daily bread, is parted with by this deed. They are left completely in the dark even as to the amount of the existing debt, which might have required them the next day to abandon their whole property for the satisfaction of that debt of their brother; and if any thing had been left, their unlimited engagement for the future made it impossible for them afterwards to call any thing their own. There is no locus penitentiæ, no opportunity allowed to them, conceiving they had done enough for their brother, who would

do nothing for himself, to stop short of their own ruin, and reserve the residue. All discretion, what John Purcell was to be permitted to spend, and his sisters were bound to pay, was with the defendant, and he states that he has so exercised that discretion that every shilling of their fortune is exhausted, and they are reduced to depend upon his charity for their subsistence.

"Extraordinary as this deed appears, it was immediately followed by one still more extraordinary, the deed of the 12th of September, 1780; the two sisters reducing their remainder in fee to interests for life, in moieties, without even the benefit of survivorship, and giving the inheritance, in the event of their deaths without issue, to Mr. M'Namara: on one day contracting an indefinite engagement for all their brother's debts, and on the next making a present to the creditor of all the means they had of fulfilling that engagement. They were placed in this strange predicament; they might have been obliged, in consequence of that transaction, to abandon their estates for life in part satisfaction of Mr. M'Namara's demand, who, having the inheritance by their gift, might have stripped them of any other property, if they had other property, and might even have thrown them into a gaol for the remainder of his debt; and this upon the extraordinary ground of gratitude and obligation to Mr. M'Namara. Gratitude and obligation to him! Admitting that in taking the deed of the preceding day, which he says he considered himself as bound in duty to his family to obtain, he had only shown a prudent and justifiable attention to his own interest, how was he, by persuading them to sacrifice their interest to his to redeem him from the effects of his imprudence in feeding their brother's extravagance, entitled to gratitude and remuneration? At the best, he was merely shifting the burthen, the consequence of indulging that extravagance, from himself to them; protecting himself from any loss by exposing them to the hazard of extreme distress. What more could the harshest creditor insist on? There is no instance of deeds so extravagant, so irrational as these are, in their combined operation. Supposing them to have been executed in favour of a person who could not by direct evi-

dence be proved, or, from the relation in which he stood, be presumed to have had any influence over these parties, it would be impossible for a mere stranger to avail himself of such deeds in a court of equity. The inference arises from the deeds themselves, the inference of undue influence exerted to obtain from these unprotected women that which the defendant had no right to demand, and they had no rational motive to give. Mr. M'Namara at least, in the relation in which he admits, and it is proved, he stood to these ladies, was bound to prevent their executing such irrational and ruinous deeds to any other person; and I am convinced he would have exerted himself for that purpose. It is impossible to suppose that he would have advised or permitted them to give away all their property to another person in this absurd manner. But men's judgments are strangely perverted by their interests. Mr. M'Namara did not see any thing improper in this conduct. On the contrary, he says he was bound in duty to himself and his family to demand the first deed; and the Purcells, in gratitude to him, thought themselves bound to offer him the second."

In the gravity of his judicial tone and bearing, in the complete finish of his decrees, both as to matter and style, and the art of expanding a particular topic into general instruction, Sir William Grant excelled the learned chief of the equity courts, Lord Eldon. The Lord Chancellor loved to be colloquial and interlocutory in his judgments, to interpose a sly quip or jest in the midst of some severe argument, to narrow the case as much as possible to a single, minute, individual point. In the perfect mastery of all chancery precedents, of all that ever had been or was ever supposed to have been decided, and a thorough acquaintance with all matters of form, Lord Eldon is supposed to have left behind his great rival. In quickness and subtlety of apprehension, in the discriminating faculty and ability of arrangement, in the comprehensive grasp of facts, these great judges were nearly equal; but the Chancellor had one fault from which the Master of the Rolls was wholly free — the being addicted to doubts, and distrusting his own original because first impressions, the habit of glancing round the clear horizon, that

he might discover a dim speck, and bid the still small cloud arise. Sir William Grant, on the contrary, adhered with firmness, but without obstinacy, to his own decided conviction. There may now and then be traced a slight symptom of impatience in Lord Eldon, when constrained to reverse a decree of Sir William Grant too promptly made; for the vigour and despatch of the subordinate judge implied a practical disparagement of his own more tardy ratiocination. However lavish of praise upon the Master of the Rolls in general, he would upon such occasions administer a grave though mild rebuke. Thus, in James v. Dean, 11 Vesey, 387, where Sir William Grant had pronounced authoritatively, "It is clear that if a man bequeath a lease of the premises he holds on lease, and the lease expires, the legatee is not entitled, though another lease exists at his death;" his decree was reversed after prolonged consideration, Lord Eldon remarking at the first argument—"I feel so much difficulty to say that is the true construction, that I cannot, from deference to his Honor's opinion, deprive the party of the very strong opinion I have against that construction. I feel a strong inclination of opinion upon this question; but I shall not hold any opinion of my own without doubt, where the Master of the Rolls has held directly the contrary."

Again, in a case (Attorney-General v. Stewart, 19 Ves. 406), upon the construction of the following bequest:—"The rest and residue of all my effects I direct may be divided for promoting the Gospel in foreign parts, and in England for bringing up ministers in different seminaries, and other charitable purposes, as I do intend to name hereafter, after all my worldly property is disposed of to the best advantage." The case at the Rolls was little argued, but on the part of the Attorney-General was treated as decidedly in favour of the charity; on which his Honor said, "That so far from its being a case upon which there could be no doubt of its being a bequest substantially to charity, he was clearly of opinion that it must be held void for uncertainty; for that, in the first place, two or three vague objects of charity were mentioned, between which so named, and other objects of charity which he professed a design of naming afterwards, the testator ex-

pressed a future intention to divide his property;" and asked how it was possible to say, in the absence of all subsequent specification, what portion the testator intended to give to the purposes he had named, and what portions to those which he intended to name, but did not name. How could it appear whether he intended to give a fortieth, or a fiftieth, or a hundreth part to both or either of the purposes mentioned? — therefore declaring "that as well on those grounds, as also from the plain meaning of the clause, as altogether referable to a future specification of particulars never afterwards made, the clause must be decreed to be void for uncertainty."

Lord Eldon reversed this decision upon appeal, protesting with some warmth of tone and manner against it: — "When this cause first came before me to be reheard, I cannot help saying that I felt a considerable degree of doubt attaching itself to a subject on which the Master of the Rolls does not seem to have entertained any: and while the great weight of authority which belongs to every decision of that learned judge, rendered me more than usually anxious to be certain of fully comprehending every principle upon which his judgment in this instance could have been founded, I experienced some satisfaction from the information, that he had not had the previous advantage of so full a discussion at the bar, especially on the part of the Attorney-General, as the great importance of the subject appeared to demand. I repeat, that I am sorry for it; because I am very unwilling to differ from any opinion pronounced by so great an authority as that of the Master of the Rolls; but in the present case I find myself driven to say that, in my judgment, this is a bequest to charitable purposes."

On the strength of the maxim taken from the Novels of Justinian that bequests to pious uses shall be deemed privileged, Lord Eldon reversed a decree of Sir William Grant's, Mills v. Farmer, Mer. 55. Sir W. Grant observes, with characteristic precision of thought and expression, that "charity in its widest sense denotes all the good affections men ought to bear to each other; in its more restricted and common sense, relief to the poor. In neither of these senses is it employed in the Court of Chancery. In that court it means

such charities only as are within the letter and the spirit of the statute of Elizabeth. The law of England in fact takes cognizance of no other charities." In the great case of the Marquis of Cholmondeley v. Lord Clinton, when the cause came on for rehearing before his successor, Sir Thomas Plumer, Lord Clinton retained Mr. Butler, and at the age of 70, Mr. Butler, for the first time, addressed a court. It was one of the very few cases in which Sir W. Grant's judgment did not receive the entire approbation of the bar.

Of the wary Chancellor's displeasure at the promptitude with which his Master of the Rolls delivered an opinion upon political matters, we have an amusing avowal in one of his letters to Lord Stowell: — "Lord Liverpool informs me by letter that the Master of the Rolls's view of the subject is, that you had a right of considering Bonaparte either as a French subject, or as a captain of freebooters or banditti, and consequently out of the pale of the protection of nations. I believe it will turn out that, if you cannot make this a casus exceptionis, or omission in the law of nations founded upon necessity, you will not really know what to say upon it — Salus reipublicæ suprema lex. As to our state, Salus omnium reipublicarum must be the suprema lex as to this case." . . .

"I dare say what the Master of the Rolls said was only in some loose conversation, and by the way, when men of his eminence talk, and sometimes judge so quickly, their conduct imposes great hardship upon such a dull, slow, deliberating, plodding dog as I am!" Lord Eldon at length decided that Napoleon might be detained as an independent belligerent.*

Though the statistics of proceedings in equity should never be too implicitly relied on, some remarkable proofs of the diligence and despatch of this great judge are transcribed by Mr. Cooper from authentic documents.† Sir Joseph Jekyll and Sir William Grant rank as almost equally great. The following is an account of the business done by Sir Joseph Jekyll whilst Master of the Rolls during a period of ten years, from Michaelmas 1745 to Michaelmas 1755, and also

* Twiss's Life of Lord Eldon.

† Returns to the House of Lords in 1811, on motion of Lord Lauderdale.

of the business done by Sir William Grant as Master of the Rolls, during a like period of ten years, from Michaelmas 1800 to Michaelmas 1810: —

SIR JOSEPH JEKYLL. 1745 to 1755.		SIR WILLIAM GRANT. 1800 to 1810.	
General Paper.		*General Paper.*	
Decrees	1674	Decrees	2518
Further directions	168	Further directions	805
By Consent.		*By Consent.*	
Decrees	642	Decrees	1065
Further directions	187	Further directions	462
Petitions.		*Petitions.*	
General Paper	1932	General Paper	4798
Consent	509	Consent	2164
Rehearings	23	Rehearings	32

The supposed unimportance of suits a century ago, with the brevity and relevancy pervading the arguments of the ancient barrister, were erroneously thought to have enabled the Master of the Rolls of that day to decide a much larger amount of business in the same period than his successors. Both judges sat during the same days and hours; both sat occasionally for the Lord Chancellor. Sir William Grant, however, sat to hear appeals in the Privy Council, which Sir Joseph rarely did. The business submitted to Sir William Grant was as important as any that comes before the Court. From the despatch which he used, few of those causes were placed on his list which are instituted merely for delay, and disappear without discussion as soon as their turn to be heard arrives. Those figures, therefore, prove to demonstration his superior facility and promptitude to one of the greatest of his predecessors. That he also carried away the palm from his mighty chief, Lord Eldon, in the admirable attribute of prompt decision, a witness beyond suspicion, Sir Samuel Romilly, has borne unimpeachable testimony: "The Lord Chancellor has in the course of this Michaelmas term been prevented from attending the Court for above a week by ill health. His place was supplied as usual by the Master of the Rolls, who heard so many causes, and made such progress in the Chancellor's paper, that, after striking out many causes because the solicitors had not de-

livered briefs in them, he discontinued his sitting in order to give the parties in the remaining causes time to prepare themselves to have their causes heard. If, among the expedients which have been thought of for clearing the present arrear of business, one should suggest that of the Chancellor staying away entirely from his court, it would be considered as a jest. The truth however is, that this would be so effectual an expedient, that, if the Chancellor were only confined to his room by illness for two successive terms, there is no doubt that all the arrear of business, except the bankrupt and lunacy petitions, which the Master of the Rolls cannot hear, would be entirely got rid of. Application was made to-day to the Lord Chancellor to restore to the paper two causes which had been struck out when the Master of the Rolls sat for him, on the ground that they stood so low down the solicitors had no reason to suppose that they would be called on, and had omitted to deliver their briefs to counsel. The Chancellor refused the application."

'Obductâ solvatur fronte senectus.'—Sir William Grant, on completing his sixty-third year, having presided for sixteen years over the Rolls Court, became anxious to float down the stream of society without any public cares, and realising a wish, long suppressed, to the surprise of many and regret of all, announced in Michaelmas Term, 1817, his determination to retire. "He made the signal of retreat from office in the full vigour of his faculties and complete zenith of his fame, before any person, except himself, could have suspected that there was the slightest failure or decline, or even the appearance of decay. He set an example of retirement, which might have been gracefully imitated by several of his contemporaries."

> "In the full vintage of his flowing honours
> Sat still, and saw it press'd by other hands."

The scene of his actual resignation is given in the second volume of Merivale's Reports, and reflects too much honour both on the bench and Chancery bar not to be transcribed. Were it omitted, we should lose the most characteristic chapter of Sir William's life.

"On the 23d of December, 1817, Sir William Grant,

having some time previously announced his intention of retiring from his office, sat at the Rolls for the last time, and after he had delivered his judgment in the case of Scott v. Porcher, the only case heard before him which was then undecided, Sir Arthur Pigott rose, and, in the name of the bar, addressed his honour as follows: —

" ' Upon your retirement, sir, from that seat of justice, in which for more than sixteen years you have presided, the gentlemen of the bar attending this court are desirous of expressing the sentiments with which they are impressed on an occasion of great regret and concern to them, and on which they wish to offer an unfeigned tribute of that respect which you have so abundantly merited, and to which you are so justly entitled. The promptitude and wisdom of your decisions have been as highly conducive to the benefit of the suitor, as they have been eminently promotive of the general administration of equity. In the performance of your important and arduous duties, you have exhibited an uninterrupted equanimity, and displayed a temper never disturbed and a patience never wearied: you have evinced an uniform and impartial attention to those engaged in the discharge of their professional duties here, and who have had the opportunity, and enjoyed the advantage, of observing that conduct in the dispensation of justice, which has been conspicuously calculated to excite emulation, and to form an illustrious example for imitation.

" ' Accept, sir, the cordial and sincere wishes of those whom you leave devoted to the labours of this place, that with the gratifying reflections that will be the inestimable reward of so considerable a portion of your life so meritoriously and exemplarily employed, you may enjoy health and happiness in repose, on your secession from business and labour, from the toils and anxieties of a painful judicial station, to the importance and eminence of which you have, in so great a degree, and in so distinguished a manner, contributed, and on which you have cast additional lustre.'

" To which his Honour replied*, —

* I have been informed by an eye-witness that Sir William Grant turned his head to the wall twice before he could articulate, and that he shed tears. He was not the only one who wept in the midst of a crowded court.

" 'It is impossible that I should not be highly gratified by the favourable opinion which the gentlemen of the bar have been pleased to express of my conduct in the situation from which I am about to retire. For this and every other mark of their regard I thank them most sincerely. The kindness — the attention — the respect, which I have uniformly experienced from them, will never be obliterated from my memory. My conduct towards them has been only that to which their own merit justly entitled them. I have always found them alike distinguished for their learning and knowledge in their profession, and for the honour and liberality which they have carried into the practice of it. The approbation of such men is truly valuable; I receive it with pleasure, I shall remember it with gratitude. Gentlemen, farewell! my best wishes will ever attend you.'"

"The foregoing address of the bar," says an acute critic, "is sufficiently neat and germane to the occasion, more so, perhaps, than addresses on the retirement of eminent judges have usually been, but it gained nothing by the manner of its delivery. Sir Arthur Pigott read it from a paper with the same tone, emphasis, and apparent interest in the contents, which are wont to be exhibited by the officer at a trial at nisi prius, in reading a piece of documentary evidence, or by the clerk of the House of Commons, when he dispatches a petition. Sir Arthur Pigott was the father of the bar; he was considerably senior, both in years and standing, to the judge whom he addressed, and he might possibly have been unable to divest himself entirely of the feeling, that, but for the neglect of his own professional pretensions, or the ascendancy of the party to which he was politically opposed, he might himself have filled the situation from which he saw Sir William Grant retiring with dignity, at a comparatively early season of life. The apathy of the organ of the bar was contrasted by the burst of emotion which escaped from his honour, in the course of those few graceful sentences which he uttered in reply." *

If Sir William Grant had any failing, says the Law Review, it was a leaning to the strict interpretation and un-

* Law Magazine.

deviating rules of the common law courts. Some of his decrees have been reversed, some overruled, and some, as Devaynes v. Noble, 1 Merivale, 530, retain their pristine weight and value in courts of law and equity. The consequence of Sir William Grant's early resignation was that he reaped a rich and unsolicited harvest of applause in his lifetime.

"Præsenti sæclo meritos cumulavit honores."

"As he has now left the judicial seat," Lord Eldon declared, "I may be permitted to say of him that his name will remain respected by the profession as long as it exists. I doubt whether the court in which he so long administered justice will ever see a judge of greater ability and integrity."

Sir William Grant and Lord Eldon were magis pares quam similes; and for that, as well as other reasons, there does not appear in Lord Eldon's compliments any jealousy of his fame.

A saturnine observer and severe critic, not over addicted to praise, and differing from the judge in politics, writing in the calmness of the closet a month after the event, has thus recorded his estimate of Sir William Grant. "Sir William Grant has resigned the office of Master of the Rolls, to the extreme regret of all those who practised in his court, and to the great misfortune of the public. His eminent abilities as a judge, his impartiality, his courtesy to the bar, his despatch, and the masterly style in which his judgments were pronounced, would at any time have entitled him to the highest praise; but his mode of administering justice appeared to the greatest advantage by the contrast it afforded to the tardy and most unsatisfactory proceedings both of the Chancellor and Vice-Chancellor. Sir Thomas Plumer succeeds Grant at the Rolls. I had before intended to discontinue my attendance at the Rolls when the next session of parliament commenced, but if I had had no such previous intention, this change would have determined me. The number of causes entered of late years for hearing at the Rolls had been unusually great; so great, that notwithstanding Grant's despatch, he has left an arrear of more than 500 causes. Causes were set down there with a twofold object; that Sir William Grant might hear, and that Sir Thomas Plumer might not hear

them. That Leach by his extraordinary presumption will involve himself in some ridiculous difficulties, is not at all improbable. He dined a few days ago in a company of fourteen persons, all of the profession, and some the intimate friends of Sir William Grant. In the course of conversation, it was said that that gentleman's leisure might have been very usefully employed, if he had been a member of the House of Lords, in assisting the Chancellor in the hearing of appeals in that house; upon which Leach said to one of Grant's friends, 'If you will undertake that he will give that assistance to the Chancellor, I will undertake that he shall be made a peer.' This was repeated to me in the same words by three persons who were present at the dinner."*

Whether the Regent's friend could have fulfilled his somewhat vainglorious boast was never put to the proof, for the ex-judge meant his retirement to be real, and was too unambitious to be cheated of the repose which he coveted, "in his reverence and his chair-days," by the gewgaws of a peerage, which he could not transmit. The coronet had been twice before within his grasp, and put aside. His mind was bent on rest, and to this he looked, though wealth and honours lay on each side his path, "irretortis oculis." When a scheme was first agitated, in 1809, for increasing the salaries of the judges, George III., with whom he was a personal favourite, sent for the Master of the Rolls to ascertain what advance of stipend he might desire. The disinterested judge made an unlooked-for and somewhat singular reply, that he did not want any, as he was perfectly satisfied with what he had. The good old king is said to have expressed, with much heartiness, his pleasure and surprise that he had found at least one satisfied man in his dominions. In consequence of this high-minded abstinence from solicitation, the salary of the Master of the Rolls was not increased, at the time of the general augmentation in the incomes of the judges. This parsimony, Mr. Robinson well remarked, when suggesting, as Chancellor of the Exchequer, a further increase in 1825, was extremely improper. As it arose from the great delicacy and disinterestedness of Sir William Grant, who, so far from

* Romilly's Diary, Jan. 1818.

applying for an increase, would not even state what the increase should be, he thought a very poor return had been made for so much delicacy. The stipend of his predecessors and his own fluctuated between 3500*l.* and 5000*l.* per annum, the judge being entitled upon every decree and dismission to the payment of 6*s.* 8*d.*, an objectionable perquisite, as it formed a tax on the administration of justice. At length, by the recent statute 7 Will. IV. & 1 Victoria, reciting that a new arrangement was most convenient and most consistent with the honour and dignity of the office, it has been enacted that all other sources of emolument should be abolished, and that the full annual sum of 7000*l.* should be paid to the Master of the Rolls out of the consolidated fund.

For five years after his retirement from the Rolls, the ex-judge continued to sit occasionally in the Cockpit, and assist in the hearing of appeals, but withdrew gradually by almost imperceptible degrees from the fatigues of public life. He visited freely with the few families in the neighbourhood of Walthamstow, where he had pitched his tent—not a very distinguished, or brilliant, or learned society, but sufficient to satisfy his few wishes and unpretending tastes. His manners were those of the old school, rather formal, and elaborately courteous. He was taciturn though convivial; not, according to Scottish phrase, an outspoken man, or every body's body. We read in Sir William Knighton's Memoirs an anecdote told by his brother baronet Sir Walter Scott, that Pitt and himself once decided, in order to make Grant talk, to remain quite silent, and only to pass the bottle quickly. This had the desired effect; their silence, with the assistance of the good old wine, made the judge talk freely. At the symposia which he sometimes shared with the Premier, Dundas, the two Scotts, and Sir J. Nicholl, the shy and haughty Pitt was, we are assured, the merriest of the company. There could be found few parties at any table who drank their wine more freely, the statesmen and brother judges their old port, and Sir William Grant his madeira.

The ex-Master had been addicted to the reading of poetry and polite literature during his busiest days of politics and law. Lord Teignmouth mentions that he was associated at

the Cockpit with Sir W. Grant, and found with pleasure the characteristic reserve of the learned judge disappeared on a closer acquaintance. There was no subject on which he found the Master more disposed to open than on poetry, to the great surprise of Charles Grant, when they had monopolised at the table a somewhat large share of each other's society, and he was curious to ascertain the subject of their dialogue.*

Graced with all that should accompany old age, the fourteen years that followed Sir W. Grant's retirement wore unperceived away, so placidly and so unmarked by any stirring incident, that his biographer is reminded of Dr. Johnson's ludicrous impatience, when inquiring from Hannah More her recollections of the latter days of Akenside. When the puzzled lady made an effort to recal some sayings of his, the matter-of-fact historian interrupted her with some asperity:—"Incident, child, incident, is what a biographer wants. Did he break his leg?"

Sir William Grant continued in the tranquil enjoyment of exercise, of literature, of society, with his faculties wholly unimpaired, and a healthy constitution, till his seventy-sixth year, when, for the advantage of a warmer climate, he withdrew to the pleasant watering-place of Dawlish, in Devonshire. There the enterprising Sir John Sinclair unearthed the ex-judge from his burrow by the present of his eccentric work on Health and Longevity, and by divers curious queries, which were thus courteously acknowledged:—

"My dear Sir, "Dawlish, 27th February, 1830.

"Allow me to thank you for your kind communication of the 8th inst., to which I might somewhat sooner have scrawled an answer, but am hardly now able to write one. My fingers have never perfectly recovered from the paralytic attack which I endured last autumn, and our unusually severe winter superinduced rheumatism in my arm, from which the present mild weather is only beginning to relieve me. The rules you have been so good as to send me appear to be very rational, though some of them are not applicable to my situation. My business lies within a very

* Lord Teignmouth's Memoirs.

narrow compass, and my reading has now no pretension to the name of study. Literary leisure is my portion, literary occupation is yours. Though I read a good deal, it is almost wholly for my own amusement. Your reading has the further and more important object of contributing to the instruction of others. I sincerely wish you health and strength to complete your useful labours. Though much gratified by your intended mention of my exertions on your election committee, I could wish it had not conveyed some reflection on my coadjutor, though I do not at present recollect who he was. Believe me to be, my dear Sir John,

"Very sincerely yours,

"WILLIAM GRANT."

The best specific for long life discovered by the indefatigable Scottish baronet was matrimony, and, that which does not always accompany it, eight hours' sound sleep at night. Sir William Grant presented in his own person a practical refutation of his first recipe for longevity, and remained a stout old bachelor to the last. I remember seeing him in London at the period of the first agitation for reform, a fine specimen of the old gentleman, tall and burly, bent somewhat with age, rather deaf, taking a lively interest in those political changes with which the times were rife, and indulging his nostrils with a long pinch of dry snuff at the expense of reform, and the modern reformer "Jack Cade, the clothier, who meant to dress the commonwealth, and turn it, and set a new nap upon it." The old judge presented still a living likeness of those admirable portraits, one by Sir Thomas Lawrence, painted at the request of the barristers practising in the Rolls Court, to be hung there as a perpetual heirloom, and the other by Harlowe for the Six Clerks' Office. There lingered in both the massive character—the predominant trait of thought and repose—a certain high-minded self-possession—the brooding of the majestic intellect over the noble, steadfast features—the grave yet stately complacence of expression.

After a slow but painless decay, the breaking up of age, Sir William Grant died at Dawlish on Friday, 25th May,

1832, in his seventy-eighth year, bequeathing a small fortune, but leaving that inheritance which is pronounced by the wisest of the sons of men to be the best, a great and good name. To his cousin, Mrs. Grant, of Laggan, the amiable and clever writer of Letters from the Mountains, and whose pecuniary difficulties he had relieved with effective but unostentatious kindness, he bequeathed by his will an annuity of one hundred pounds, leaving to other distant relatives, and friends, and dependants, similar tokens of benevolence and good will.* A lawyer without the slightest greed of gain—a scholar perfect in the science of jurisprudence—a judge peerless even in English courts of justice—a gentleman of Sidney's school "of high thoughts, bred in a heart of courtesy," equal to Murray or Charles Yorke in the senate—not inferior to Hardwicke or Jekyll on the judgment-seat—he is gone, and has left great men behind him, but no successor like himself. According to the mark of homage in his native land, a rude but simple offering of gratitude, this stone is cast upon his cairn.

* Mrs. Grant writes, June, 1832, "I have lately received intelligence of the death of my respected friend Sir William Grant, the late Master of the Rolls, one of the most valuable characters that benefited society by his conduct and example, and who was to me more than a brother. To him I was proud of being obliged, though I was not at liberty to say so while he lived. He indeed

'Sank to rest,
By all his country's wishes blest.'

Even the rancour of party never attacked his spotless name."

CHAPTER V.

THE LIFE OF LORD TENTERDEN.

"LABORE," the motto which this great lawyer selected on his promotion to the bench, is not sufficiently indicative of the cause of his success. To a long course of patient, persevering industry, directed to one sole object—the attainment of professional knowledge — Mr. Abbott brought an acute and logical mind, fixed moral habits, and a determined will, that strove with difficulties and abhorred dissipation. His life may form a useful study to every member of the profession, whose capabilities of conferring wealth and fame on the most humble student it so well illustrated; for, though unenlivened by stirring incident, and barren of adventure, it proves that diligence in the study of the law, self-relying, self-restricting, will achieve a high reward without patronage—that the lawyer of sound abilities, and dogged application, will write out his own passport to rank and fortune.

Mr. Abbott was born in Canterbury on the 7th of October, 1762, the son of a barber. Cervantes, Le Sage nd Scott, in their lively portraits of cunning shavers, appear to have divided the species into two classes; the one grave and pensive, the other rotund and garrulous. Old Mr. Abbott belonged to the former class, and has been described* as "a tall, erect, primitive-looking man, with a large club pig-tail, going about with the instruments of his business under one arm, and attended frequently by his son Charles, a youth as decent, grave, and primitive-looking as himself. Both the parents, though poor, were respected for their good conduct, and on their head-stones might have been inscribed the eulogy which Franklin wrote on his father and mother in a rank of life equally humble, that "he was pious and prudent —she, discreet and virtuous."

* Gentleman's Magazine.

Their son Charles drew his first breath within the precincts of the cathedral, close to its great western portal, in the same mean-looking tenement, from which had emerged a countess of Salisbury in the olden time.* The excellent grammar school of his native city afforded to day scholars the cheap means of a sound education. Accordingly young Abbott was entered in 1769 on the foundation of the king's school of the cathedral, founded by Henry VIII., under the tuition of Dr. Osmond Beauvoir, who is stated by Sir Egerton Brydges to have been an admirable classical scholar, of fine taste, and some genius.

The literary baronet, young Abbott's first and firm friend through life, has given, with some pardonable egotism, a characteristic description of the future chief justice in his boyish days. "I became acquainted with him in July 1775, when I was removed from Maidstone to Canterbury school. From his earliest years he was industrious, apprehensive, regular and correct in all his conduct, even in his temper, and prudent in every thing, and early gave presages of future distinction. I was about six or seven years his junior in age, and was placed in the same class with him; in which, after a short struggle, I won the next place to him, and kept it till I quitted school for Cambridge, in the autumn of 1780, in my eighteenth year. Though we were in some degree competitors, our friendship was never broken or cooled. He always exceeded me in accuracy, steadiness, and equality of labour, while I was more fitful, flighty, and enthusiastic. He knew the rules of grammar better, and was more sure in any examination or task. He wrote Latin verses and prose themes with more correctness, while I was more ambitious, and more unequal, and preferred translating Horace into English verse to writing moral essays, whether in Latin or in English. There was the same difference in our tempers and our tastes. He was always prudent and calm — I was always passionate and restless. Each knew well wherein the other's strength lay, and yielded to it."

An accurate likeness has also been sketched by another

* Sir Egerton Brydges' Autobiography.

schoolfellow* of the patient boy, who never "crept with satchel" on his shoulders "unwillingly to school." "I remember him well, grave, silent, and demure; always studious and well behaved, reading his book instead of accompanying us to play, and recommending himself to all who saw and knew him by his quiet and decent demeanour. I think his first rise in life was owing to a boy of the name of Thurlow, an illegitimate son of the lord chancellor, who was at Canterbury free school with us. Abbott and this boy were well acquainted, and when Thurlow went home for the holidays he took young Abbott with him. He thus became known to Lord Thurlow, and was a kind of helping tutor to his son; and I have always heard and am persuaded, that it was by his lordship's aid he was afterwards sent to college. The clergy of Canterbury, however, always took great notice of him, as they knew and respected his father. When Lord Tenterden and Mr. Justice Richards, on going the circuit, once visited the cathedral of Canterbury, the latter took notice of a singing man in the choir who had an excellent voice. 'Ah!' said Lord Tenterden, 'that is the only man I ever envied. When at school in this town, we were candidates together for a chorister's place, and he obtained it.'"

On the accuracy of this anecdotist's personal recollections much firmer reliance may be placed than on the soundness of his conjectures. There was no need of illegitimate influence to furnish a clever and modest boy with the means of reaching college as an exhibitioner, his school furnishing this advantage; and the clergy, upon whose heads old Mr. Abbott operated, like the venerable Caxon upon Jonathan Oldbuck's, being ready dispensers of its patronage. That they were not loath to eke out the pittance with which an abstemious youth, giving no wine parties, wanting no private tutor, innocent of horse-flesh, might contrive to subsist at the university, we have the testimony of the learned judge himself for asserting.

* A third schoolfellow knew Lord Tenterden better than either, though he has left no written recollections of his patron, whom he served for many years, and after his elevation to the bench, as a faithful and confidential clerk.— *Gentleman's Magazine.*

He attended a meeting of the trustees of Canterbury school to consider an application from an exhibitioner, then at some college in Oxford, for an increase of his stipend. An inquiry was made for precedents, and only one could be at all recollected, which had occurred many years before. "That student was myself," said the learned judge, who immediately made the advanced allowance sought by the petitioner out of his own private purse.

His grateful sense of the benefits he had derived from the institution was expressed by the then Mr. Justice Abbott with much warmth, upon another occasion. In 1817, the centenary of the school, he accepted an invitation to Canterbury, witnessed the examination of the scholars, addressed the successful candidates, and, after attending the usual service and sermon at the cathedral, dined with the masters and members of the institution at the principal hotel of the city. In his speech after dinner he expressed himself with feeling and effect, and declared that to the free school of Canterbury he owed, under the divine blessing, the first and best means of his elevation in life. Nor was his gratitude confined to words. With a tasteful retrospect of the causes of his own success, he founded and endowed two annual prizes; the one for the best English essay, the other for the best Latin verse. It was in the same grateful spirit for his own scholastic advantages that the late Dean Tucker provided the means of education to boys as poor as he had been. "I felt the want of such assistance in my little way," said the worthy clergyman, "when I was somewhat in their situation, and therefore resolved with myself, at an early period in life, that, if ever Providence should enable me to call uncommon or useful talents out of obscurity, I would do it. That opportunity Providence has now put into my hands." With a like feeling Dr. Franklin gave the interest of 100*l.* to be laid out annually in silver medals, as rewards for scholarship, in the academy where he had been brought up. To the credit of grateful scholars, such instances might be multiplied a hundred fold. There is scarcely a grammar school in England, on whose table similar harvest offerings have not been laid by the rich or noble, whom the founder's bounty formerly fed

and taught, attesting in the tribute, at once the merits of the foundation, and their own.

In the beginning of 1778 Mr. Abbott, then seventeen, was elected scholar of Corpus Christi College, Oxford, with the pittance, including his exhibition, of 50*l.* a year. His matriculation succeeded, by an interval of little more than half a dozen years, that of the two Scotts (the future Lords Stowell and Eldon), then holding college fellowships of 120*l.* per annum, destined with himself to become the three heads of the law. Perhaps there could not at the time have been found three more simple, humble, modest looking men within the compass of the university, and certainly not three men, from whose air and deportment any one could less have augured such a splendid futurity. At that period Alma Mater, ever too frugal in distributing honours and rewards, had no class list, in which to include, by an exact scale of merit, classical or mathematical attainments. Her chancellor's medals for Latin and English composition were the only two, both of which Mr. Abbott was clever and fortunate enough to gain. He failed in his attempt the first year, but enjoyed the gratification of reading on the copy of verses returned to him the "quàm proximè accessit," the mark of honour bestowed on the second best. The candidate who carried off the medal—the subject "Calpé obsessa"—was the amiable poet, the Rev. W. L. Bowles, then a scholar of Trinity, whom the judge met at Salisbury, for the first time, more than forty years after the awarding of the prize. His lordship immediately reverted to the literary contest in which he had been vanquished, the conflicts and distinctions of the university being rarely, if ever, forgotten.

In his third year at Oxford young Abbott stood up in the theatre to recite his prize poem of "Globus Æroſtaticus;" the air balloon, which Lunardi had about that time introduced into England, having filled the minds of men with amazement and speculation. In 1786 the scholar of Corpus again received the plaudits of the university, assembled to hear his admirable prize essay "On the Use and Abuse of Satire."

This composition, choice in language, full of learning,

replete with argument and illustration, may be placed among the very best of the Oxford classics, even though illustrated with the names of Scott, and Addington, and Grenville. Interesting in the subject, it derives additional interest from the circumstance of the author having been called upon to sit in judgment on his early opinions. Our space will only permit a few selections. The clear and analytical division of the subject proves a logical mind.

"Early use of panegyrical and satiric composition; gradual increase of the latter with the progress of refinement.

"Different species of satire, invective, and ridicule.

"General division of satire into personal, political, moral, and critical.

"I. 1. Personal satire necessary to enforce obedience to general instructions. 2. Its abuse, when the subject is improperly chosen, when the manner is unsuitable to the subject, and when it proceeds from private animosity.

"II. 1. Political satire, necessary for the general support of mixed governments. 2. Its abuse, when it tends to lessen the dignity of the supreme authority, to promote national division, or to weaken the spirit of patriotism.

"III. 1. Moral satire, its use in exposing error, folly, and vice. 2. Its abuse, when applied as the test of truth, and when it tends to weaken the social affections.

"IV. 1. Critical satire, its use in the introduction and support of correct taste. 2. Its abuse, when directed against the solid parts of science, or the correct productions of genius.

"Conclusion. Comparison of the benefits and disadvantages derived from satire. Superiority of the former."

Mr. Abbott's reflections on personal satire are forcible and just.

"Personal satire has been successfully directed in all countries against the vain pretenders to genius and learning, who, if they were not rendered contemptible by ridicule, would too often attract the attention, and corrupt the taste, of their age. By employing irony the most artful, and wit the most acute, against the unnatural and insipid among his contemporaries, Boileau drew the affections and judgment of his nation to the chaste and interesting productions of Molière and Racine.

"Such have been the advantages derived from personal satire, but so great on the contrary are the injuries resulting from its misapplication, that the legislature of all nations has been exerted to restrain it. For if they, whose failings were unknown and harmless, be brought forth at once to notice and shame, or if, from the weakness common to human nature, illustrious characters be made objects of contempt, the triumphs of vice are promoted by increasing the number of the vicious, and virtue loses much of its dignity and force, by being deprived of those names, which had contributed to its support. Not less injurious to science is the unjust censure of literary merit, which tends both to damp the ardour of genius, and to mislead the public taste. The most striking examples of the abuse of personal satire are furnished by that nation, in which its freedom was the greatest. The theatres of Athens once endured to behold the wisest of her philosophers, and the most virtuous of her poets, derided with all the grossness of malicious scurrility. Nor has modern poetry been altogether free from this disgrace. Fortunate, however, it is that, although the judgment of the weak may be for a time misguided, truth will in the end prevail: the respect and admiration due to the names of Burnet and of Bentley, of Warburton and of Johnson, are now no longer lessened by the wit of Swift, or the asperity of Churchill.

"Even where the subject or design is not improperly chosen, abuse may still arise from the disposition and colouring of the piece. When bitterness and severity are employed against men whose failings may be venial and light, or ridicule degenerates either into the broad attacks of sarcastic buffoonery, or the unmanly treachery of dark hints and poisonous allusions, not only the particular punishment is excessive and unjust, but also general malice is fostered by new supplies of slander."

Upon the whole, our young author thinks that the good effects of satire are far more widely spread, and more enduring, than the bad.

"From this general representation of the good and ill effects of satire, we may be enabled to form a comparison of their respective importance. By the improper exercise of

satire individuals have sometimes been exposed to undeserved contempt; nations have been inspired with unjustifiable animosity; immoral sentiments have been infused; and false taste has received encouragement and support. On the contrary, by the just exertions of satire, personal licentiousness has frequently been restrained; the establishments of kingdoms have been supported, and the precepts of morality and taste conveyed in a form the most alluring and efficacious. The success, however, of all those productions that have not been directed by virtue and justice, has been confined and transient, whatever genius or talents might be employed in their composition; by the wise among their contemporaries they have been disregarded, and in the following age they have sunk into oblivion. But the effusions of wit, united with truth, have been received with universal approbation, and preserved with perpetual esteem, their influence has been extended over nations, and prolonged through ages. Hence, perhaps, we need not hesitate to conclude that the benefits derived from satire are far superior to the disadvantages with regard both to their extent and duration; and its authors may therefore deservedly be numbered among the happiest instructors of mankind. Charles Abbott, A. B., 1786, Corpus Christi College."

The successful essayist and elegant Latin scholar was soon rewarded with a college fellowship, and appointed junior tutor to Mr. (afterwards Bishop) Burgess, his early friend and admirer. Above all his Oxford pupils the Bishop of Salisbury always spoke with particular regard of Mr. Abbott. He often referred to his career at College, and in after life, as strikingly illustrative of the intimate connection between studious and moral habits, and future professional eminence.* Among the private pupils whom the office of tutor introduced to his care, was a son of Mr. Justice Buller, a fortunate introduction, as it rescued the future ornament of the law from that comparative seclusion, in which his days would otherwise have worn away. The sagacious judge, to whose clear appreciation of talent this country has been on many occasions

* Life of Bishop Burgess.

indebted, immediately recognised the strong and solid understanding of the Oxford scholar, and recommended him earnestly to embrace the legal profession in preference to the church, for which he had hitherto designed himself. Mr. Abbott yielded to his kind advice, and in the year 1788, when he was in his twenty-sixth year, entered his name in the books of the Inner Temple. He submitted also, in compliance with the judicious suggestion of the experienced lawyer, to the drudgery of attending for some months the office of the eminent London solicitors, Messrs. Sandys & Co., of Craig's Court, whose wearisome mechanical details must have formed a sad contrast to the charms of classical composition, and to those elegancies of literary leisure, in which he had rejoiced so long.

In the dusky avenues of Brick Court he gave himself up, without any useless repining, to the development of the mysteries which surrounded his new course of study. From the attorney's office he went to the chambers of Mr. (afterwards Baron) Wood, a regular black-letter veteran, the most profound lawyer of his day. Aided by his recommendation, Mr. Abbott began himself to practise the science of a special pleader with marked success. The ever open door, quick attention when despatch was particularly requested, the neat pleadings, and safe opinions, soon increased the number of clients, who renewed their visits to his chambers, and inspired him with courage to be called to the bar.

He was called by the Society of the Inner Temple (on the same day as Mr. Peake by Lincoln's Inn), in Trinity term, 1795. Both having selected the Oxford circuit, the rule was established, which has since been invariably followed, that he should be considered senior whose name had been the longest on the books of his society. On circuit Mr. Abbott speedily rose into the leading business as junior, too quickly, indeed, not to excite some jealous animadversion. There are yet extant rumours of his having been deemed too courteous to attornies, and of having displayed too keen an appetency for briefs; but against what successful lawyer have not some such consolations for failure been whispered! By his leaders in silk, whether in banc or at nisi prius, the merits of a junior

who could often suggest a case in point, and thoroughly master the most abstruse technicalities of pleading, were soon appreciated and readily acknowledged.

Sir Vicary Gibbs, in particular, afforded him at least all the encouragement that professional etiquette would allow. When attorney-general, acting on the principle "Detur digniori," he appointed Mr. Abbott to that important office which is dubbed with the familiar title of Treasury-devil, that is, the junior counsel to whose care the legal business of the government is intrusted. In this character he assisted at all the state trials which darkened by their fearful recurrence the close of the last century; the prosecution of Crossfield for high treason in 1796; of Reeves for a libel on the English constitution in 1797; and of O'Coigly and O'Connor for treason in 1798.

As the proofs of his efficiency multiplied, the junior of the Treasury was selected for the office of standing counsel to the Bank and other great mercantile communities, whose confidence could not but induce that of individuals. Early and late his chambers were besieged by clients; and encouraged by success, he risked that step in life on which lawyers as a body are nothing loth to venture, an early marriage. On the 13th of July, 1795, he was married to Mary, eldest daughter of John Lagier Lamotte, Esq., a gentleman of fortune residing at Basilden, in Kent. The father called at the chambers of the young lawyer, and upon asking him "What means he had wherewith to maintain a wife?" received this pithy answer, "The books in this room, and two pupils in the next."

Mr. Abbott's marriage with this lady, who survived him only six weeks, and by whom he had two sons and two daughters, was accompanied with so much domestic happiness, that he afterwards lived wholly in his own family, and associated less with his brethren of the bar than any man of the day. It has been recorded of himself by a good husband and prolific author, that he deserved well of his country, having caused two hostages of merit to be presented to the commonwealth yearly for twenty years,—a book and a baby! Though Mr. Abbott could not lay claim for more than the first year to such a

double paternity, he so far followed the precedent as immediately to crown his matrimonial cares with the honours of authorship. His Treatise on the Law of Merchant Shipping and Seamen will always rank among the few classical works that adorn modern jurisprudence. In the dedication to Lord Chancellor Eldon, he states that his lordship had suggested the subject, and that he had undertaken it by his advice.

This book is very strongly marked with that clear common sense, and diligent reading, which had always characterized the author. The method is original, and the distribution of his topics not unworthy of Blackstone. The style is singularly plain and unaffected, and therefore good. The late Mr. Dodd, a competent authority, has pronounced a warm eulogium on the merits of a work which has gone through more editions than any modern law book, not confined to points of practice. "Its unerring accuracy, judicious union of a correct analysis of cases, with a connected dissertation on the subject, and extensive researches into the writings of foreign jurists, make the volume as admirable for style and erudition, as eminently useful for its practical views and luminous arrangement." These qualities have called forth the repeated praises of Lords Stowell, Eldon, and Ellenborough, and have rendered it a practical guide and vade mecum on all questions of marine law,—a chart by which the litigating mariner may safely direct his course. One of the questions, discussed with proper professional gravity, whether such reasonable care had been taken of the cargo as to render a master liable, or discharge him from responsibility, may amuse the reader.

"If mice eat the cargo, and thereby occasion no small damage to the merchant, the master must make good the loss, because he is guilty of a fault; yet, if he had cats on board, he shall be excused." (Roccus, 58.; Abbott on Shipping, p. 244.) "The rule and exception," observes the author, "although bearing somewhat of a ludicrous air, furnish a good illustration of the general principle."

To what extent Mr. Abbott's professional gains, considerable before, were enhanced by the success of this publication, we have his own authority for declaring. In general

the emoluments of the practising lawyer are grievously exaggerated, according to Dr. Johnson's axiom, that, when numbers are guessed, they are always magnified. But Mr. Abbott's fee-book was laid open to public scrutiny through the exactions of the law, and his punctilious adherence to its mandates. When the returns to the income tax were called for, he sent an account, which astonished the collector, not less by its curious accuracy, than the sum total, being the precise amount of his fees received during the past year, 8026*l.* 5*s.* . . . The shrewd tax-gatherer, a native of the place, insinuated that all the gentlemen of the inns of court were not quite so conscientious in their returns; the worthy functionary might, however, have taken into consideration that not a dozen members of the fraternity had such returns to make.

His income from the profession so largely exceeding the salary of a judge, he declined in 1808 from prudential motives the offer of a seat on the bench, at the time when Mr. Justice Lawrence removed from the King's Bench to the Court of Common Pleas. That income increased with each succeeding year, and enabled the thrifty lawyer, with the profits of his judicial station, to leave on his death a large real estate, and personal property to the amount of 120,000*l.*

Though thus eminently fortunate, and at the head of chamber counsel, that valuable body from whom the old title of counsellor is derived, Mr. Abbott always shunned the dangerous honours of a silk gown, and never basked but once in the splendour of a special retainer. As a leading nisi prius advocate, he scarcely could have distinguished himself. An advocate, besides quickness of apprehension and acuteness, ought to possess considerable fervour of imagination, and excitability of disposition. But a man of fervid temperament is very apt to see some parts of a case in a stronger light than that in which he ought to see them, and to shade other parts. Mr. Abbott's great equanimity and coolness, his aptitude in taking correct rather than strong views, his disposition to attribute to each part of a cause its due importance, and no more, qualities invaluable in a judge, impaired his efficiency as an advocate.

We learn from the graphic sketch of Lord Brougham, how

different an estimate would be formed of his power by those who saw him in court, or met him in consultation.

"A man of great legal abilities, and of a reputation, though high, by no means beyond his merits. On the contrary it may be doubted, if he ever enjoyed all the fame that his capacity and his learning entitled him to. For he had no shining talents; he never was a leader at the bar; his genius for law was by no means of the depth and originality which distinguished Mr. Holroyd; nor had he the inexhaustible ingenuity of Mr. Littledale, nor perhaps the singular neatness and elegance of Mr. Richardson. His style of arguing was clear and cogent, but far from brilliant; his opinions were learned and satisfactory, without being strikingly profound; his advice, however, was always safe, although sometimes, from his habitual and extreme caution, it might be deficient in boldness or vigour. As a leader he very rarely and by some extraordinary accident appeared, and this in a manner so little satisfactory to himself, that he peremptorily declined it whenever refusal was possible. Indeed, he showed none of the capacity which distinguished Mr. Holroyd when the same unwelcome chance befel him, for he seemed to have no notion of a leader's duty, beyond exposing the pleadings and the law of the case to the jury, who could not comprehend them with all his explanation. His legal arguments, of which for many years the books are full, were extremely good, without reaching any very high pitch of excellence; they were quite clear, abundantly full of case law, betokening some dread of grappling with principle, and displaying none of the felicitous commentary that marked Mr. Holroyd."

None knew, or felt, these deficiencies more thoroughly than Mr. Abbott himself; who, as his pecuniary means expanded, and his youthful energies declined, began to tire of forensic duty, and to yearn for the comparative tranquillity of the bench. "For twenty years," says Sir Egerton Brydges, "he had worked at the bar with steady and progressive profit and fame, but with no sudden bursts, or momentary blaze. At length his health and spirits began to give way. I well remember, in the year 1815, his lamenting to me in a desponding

tone that his eyesight was impaired, and that he had some thoughts of retiring altogether from the profession. I dissuaded him, and entreated him not to throw away all the advantages he had gained by a life of painful toil, at the very period when he might hope for the 'otium cum dignitate.' I left him with regret, and under the impression that his health and spirits were declining."

The Chancellor was, however, too apprecient of Mr. Abbott's worth to listen to a resolution, which he had probably conceived in an hour of suffering from dyspepsia, and never seriously contemplated. In February 1816, a seat as puisné judge in the Court of Common Pleas was again placed at his disposal, and accepted. He was made serjeant on the 12th February, and gave rings to the judges with the characteristic motto "labore." His brother serjeants, accustomed to the clamours of the forum, estimated his talents at a much lower rate than the head of the law. Some murmured, and others openly complained that their bar might have afforded a lawyer more adequate to the situation, and that the "band of brothers" were not well treated in having a King's Bench lawyer, and one of such moderate nisi prius practice, advanced over the leaders in that court. The knowledge of the new judge was very unjustly underrated by these complainants. As a lawyer, there were very few in the Common Pleas who could have sustained any comparison with him; and as a scholar he was superior to most. He had read more law than almost any man of his day, and had extended his researches, where they had never deemed it necessary to propel their labours, into the foreign jurists.

The grave and decorous deportment of Mr. Justice Abbott did not torment long these rough and boisterous serjeants. In the May of the same year, a vacancy occurring in the King's Bench, on the death of Mr. Justice Le Blanc, Judge Abbott was requested to supply the vacancy. He expressed some aversion at first to exchanging the comparative ease of his court for the toil of the other, but yielded at length to the anxious importunity of Lord Ellenborough. In two years the health of that distinguished judge declined, and on the 4th of November, 1818, fourteen years to a day before his

own death, Sir Charles Abbott was appointed Chief Justice of the Queen's Bench.

With what admirable skill, honour, and steadiness he fulfilled the laborious, difficult, almost overwhelming, duties of his high station, is universally acknowledged. Testimony can go no higher than the following description from an eyewitness, the first in rank and weightiest in authority, Lord Brougham. In his Historical Sketches, he has given the following description of the head of the court in which he had himself practised so long:

"Although his reputation at the bar was firmly established for a long course of years, it was not till he became a judge, hardly till he became chief justice, that his merits were fully known. It then appeared that he had a singularly judicial understanding, and even the defects which had kept him in the less ambitious walks of the profession — his caution, his aversion to all that was experimental, his want of fancy — contributed, with his greater qualities, to give him a very prominent rank indeed among our ablest judges. One defect alone he had, which was likely to impede his progress towards this eminent station; but of that he was so conscious as to protect himself against it by constant and effectual precautions. His temper was naturally bad; it was hasty and it was violent, forming a marked contrast with the rest of his mind. But it was singular with what success he fought against this, and how he mastered the rebellious part of his nature. Indeed it was a study to observe this battle, or rather victory, for the conflict was too successful to be apparent on many occasions. On the bench it rarely broke out, but there was observed a truly praiseworthy feature, singularly becoming, in the demeanour of a judge. Whatever struggles with the advocate there might be carried on during the heat of a cause, and how great soever might be the asperity shown on either part, all passed away — all was, even to the vestige of the trace of it, discharged from his mind, when the peculiar duty of the judge came to be performed; and he directed the jury, in every particular, as if no irritation had ever passed over his mind in the course of the cause. Although nothing can be more manifest than the injustice of making the client suffer for the fault or

the misfortune of his advocate—his fault, if he misconducted himself towards the judge; his misfortune, if he unwittingly gave offence—yet, whoever has practised at nisi prius knows well, how rare it is to find a judge of an unquiet temper, especially one of an irascible disposition, who can go through the trial without suffering his course to be affected by the personal conflicts, which may have taken place in the progress of the cause. It was therefore an edifying sight to observe Lord Tenterden, whose temper had been visibly affected during the trial (for on the bench he had not always the entire command of it, which we have described him as possessing while at the bar), addressing himself to the points in the cause, with the same perfect calmness and indifference, with which a mathematician pursues the investigation of an abstract truth, as if there were neither the parties nor the advocates in existence, and only bent upon the discovery and the elucidation of truth.

"His eminence as a judge was great and undeniable; it was in a short time confessed by all, even by those who had some prejudice against him at first, from marking the extreme contrast between him and his more brilliant predecessor, and from the impression generally prevailing, and in general well founded, that men, who have never led causes at the bar, make indifferent judges, and are unequal to the despatch of judicial business. Lord Tenterden from the first displayed great judicial capacity, yet it is certain that, for some time, he formed a very remarkable exception to the rule. He took no general and comprehensive view of a case; he examined its details part by part; he did not, like a leader, get up on an eminence, and from thence survey the object in all its bearings, nor was he aware of the relative importance of its different portions. But in order to perform his office he would select one particular compartment, and he would choose not the most difficult. To this he bent his attention, and seemed a good deal troubled, and even impatient if it were drawn away to other points, not within the limits, which he had chosen to trace. It is remarkable not only how this habit wore off, instead of being confirmed and extended, but also how great a start he made in improvement after he had been five or six years chief of his court, and on

the occasion of a long and severe illness, that seemed to render his retirement from the bench inevitable. His temper was softened, his attention became more comprehensive, he viewed things more upon an enlarged scale, his industry was not relaxed, increased it could not be, and during the last seven or eight years of his time he exhibited a very eminent instance of great judicial capacity; at all times his law was safe and accurate, and ready; but he could deal now far more ably with facts.

"It must not be forgotten that the right decision of causes is only one, though certainly the most important, office of justice; another, only second in importance to that, is the giving parties satisfaction, such satisfaction as is enough for reasonable persons. Now as every person is impressed with the idea that there is but one cause in the world, and that his own, however unmindful of this the Court and the counsel may be, discontent, heart-burnings, feelings of injustice suffered, desire of redress in other ways, and, among these, oftentimes by means of other suits, is sure to be kept in the train of Themis when the pace she moves at is too rapid for ordinary eyes to follow, and breaks through the surrounding ties and feelings of interest too rudely. Hence the despatch effected is frequently more apparent than real, of which a remarkable example used to be afforded by Sir John Leach, whose swift decisions, without hearing, only produced appeals to the great seal. But in whatever way these opinions may be disposed of, one thing was certain, the kind of arrangement which has been described as prevailing among the leaders in Lord Ellenborough's time, would only be found practicable, as long as the lead should be confined within a very few hands. When it was at all scattered, such a thing was altogether out of the question, and in Lord Tenterden's time this distribution undeniably took place. It may be supposed, from what has been said of his scientific, as well as classical acquirements, that in trying causes, where these accomplishments could be displayed, he rose above the ordinary level of his great merit. To see him preside over a complicated patent case was a very great treat, whether to a lawyer or a man of science. It was a singular exhibition of legal,

combined with mechanical, skill, each keeping within its own proper sphere, but each conspiring with the other to obtain the full investigation of the cause in all its bearings, and its clear elucidation to the jury. He it was too, who first leant against the absurd, unjust, and mischievous refinements which all former judges conceived it fit that they should display, a constant astuteness to defeat the claims of a patentee upon the unreflecting notion of his right being a monopoly, and the public interest being damaged by it, wholly forgetting his genius and labour had been first given to the public in reversion to purchase the temporary possession of that monopoly."

The following sketch of Lord Tenterden's judicial character is also adapted from the masterly portrait of Mr. Serjeant Talfourd: *

"The chief judicial virtue of his mind was that of *impartiality;* not mere independence of external influences, but the general absence of tendency in the mind itself to take a part, or receive a bias. How beneficial this peculiarity must prove in the judicial investigation of the ordinary differences of mankind, is obvious; yet in him it was little else than a remarkable absence of imagination, passion, and sympathy. In him the disposition to single out some one object from others for preference; the power and the love of accumulating associations around it, and of taking an abstract interest in its progress, were wholly wanting. The spirit of partisanship, almost inseparable from human nature itself, unconsciously mingling in all our thoughts, and imparting interest to things else indifferent, is especially cherished by the habits and excitements of an advocate's profession, and can, therefore, seldom be wholly prevented from insinuating itself into the feelings of the most upright and honourable judges. But Lord Tenterden, although long at the bar, had rarely exercised those functions of an advocate which quicken the pulse and agitate the feelings; he had been contented with the fame of the neatest, the most accurate, and the most logical of pleaders; and no more thought of trials in which he was engaged as awakening busy hopes and fears, than of the convey-

* Law Magazine, vol. ix.

ances he set forth in his pleas as suggesting pictures of the country to which they related.

"The very exceptions to his general impartiality of mind, partook of its passionless and unaspiring character. In political questions, although charged with a leaning to the side of power, he had no master prejudices; no sense of grandeur or gradation; as little true sympathy with a high oppressor as with his victims. On the great trials of strength between the Government and the people, he was rarely aroused from his ordinary calmness; and he never, like his predecessor, sought to erect an independent tyranny by which he might trample on freedom of his own proper wrong. He was 'not born so high' in station, or in thought, as to become the comrade of haughty corruption. If seduced at all by power, it was in its humbler forms — the immunities of the unpaid magistracy, and the chartered rights of small corporations, which found in him a congenial protector. If he had a preferable regard in the world, beyond the circle of his own family and friends, it was for these petty aristocracies, which did not repel or chill him. If he was overawed by rank, he was still more repelled by penury, the idea of which made him shiver even amidst the warmth of the Court of King's Bench, in which alone he seemed to live. His moral, like his intellectual, sphere was contracted; it did not extend far beyond the decalogue; it did not conclude *to the country*, but was verified *by the record*. His knowledge, not indeed of the most atrocious, but of the meanest parts of human nature, made him credulous of fraud; a suggestion of its existence always impelled his sagacity to search it out; and if conspiracy was the charge, and an attorney among the defendants, there were small chances of acquittal. If a solicitor charged with a fraud, was proved to have directly said the thing which was not, though independent of the matter charged, he saw at once the iniquity, and believed the worst, for he 'hated a lie' in an attorney, as Mrs. Peachum did in Filch! On one of these occasions, when two solicitors were accused (wrongfully, as was manifested by a second trial), of conspiring with a young officer allied to an influential family, to sell a legacy which had been satisfied, a little passage strikingly

contrasted the character of Lord Tenterden's morality with that of his successor. The young man had no counsel; the attornies were defended by Mr. Denman, who, adverting to the melancholy situation in which the principal defendant was left by his friends, deplored that 'they had not given even a single brief to some gentleman at the bar who might see the ceremony of conviction decently performed upon him;' to which Lord Tenterden replied with unusual emphasis—'There is no proof that he ever applied to them to do so;' as if 'a special instance and request' were material to the affecting picture of desolation, which the noble-hearted advocate had drawn at a master stroke. . . . . The habits of Lord Tenterden's mind disinclined him for any bold innovation on the constructions of the common law adopted before him; but he expounded them with lucid clearness, and endeavoured, wherever he could without violence, to make them accord with common sense and justice. The chief peculiarity and excellence of his decisions consist in the frequent introduction of the word '*reasonable*' into their terms. He so applied this word, as in many instances, to relax the severity of legal rules, to mediate happily between opposing maxims, and to give a liberal facility to the application of the law by judges and juries to the varying circumstances of cases, which before had been brought into a single class. If he would not break through a rule for the greatest occasion, he was acute in discovering ways by which the right might be done without seeming to infringe it; and his efforts to make technical distinctions subservient to substantial justice were often ingenious and happy. His language, wholly unadorned, was singularly clear and concise, and was as conspicuous and correct in extemporaneous judgments as in those which he delivered from paper. When Sir James Scarlett, on the trial of Mr. Hunt for the publication of 'The Vision of Judgement,' had referred to the poetry of Lord Byron and Mr. Southey as familiar to the Jury, Lord Tenterden observed, that for himself 'he was bred in too severe a school of taste to admire the modern poets;' and it was obvious that his literary associations had never been permitted to wander beyond the circle of school-boy scholarship.

"At *Nisi Prius* Lord Tenterden generally presided with patience, which gave satisfaction to the suitors; but the occasional ebullitions of his temper were of a very provoking kind. His remarks on witnesses who had obviously no intention to prevaricate, but whose answers did not please him, were harsh; and his pettish rebukes to counsel had more of the style of a village schoolmaster than of a judge. With this exception he was remarkably qualified to preside at the trial of ordinary causes; not disgusted with the driest details; capable of unravelling a complicated account or tissue of facts with equal accuracy; and giving to the jury the benefit of a clear summary of the evidence as applicable to the issues, without seeking to invade their province, or unfairly to influence their decision. But for those higher occasions in which a judge may be called to estimate noble natures in their strengths and their weaknesses, to understand the deepest passions, and make allowances for generous infirmities, he had no experience, no answering virtue or frailty. His classical knowledge alone cast a grace about his legal reputation; his only abstraction from facts was in recollecting and dwelling upon the study of words; and he left an annual prize to be awarded for Latin verse at the grammar school of his native city, perhaps in gratitude for the most gentle and elevated thoughts which had softened his laborious life. He performed the duties of his arduous office without ostentation, and has left the common law of England more clear and better adapted to ordinary uses than he found it."

One quality that eminently distinguished Lord Tenterden was the correct, succinct, and appropriate language in which his statements and decisions were clothed. "In this kind of diction he was surpassed by none, and equalled by few. No doubt his success in expressing his ideas was in part owing to his avoiding all large or venturous matters, and confining himself within limits not difficult, most accurately surveyed and scanned. But within that range his diction was extremely happy."

This logical judge laid down legal propositions with transparent distinctness, and, when called upon to explain or defend a proposition, expressed his opinion in the most simple, yet

appropriate, terms, that could be adopted. The law of libel as it affects publishers, and the reason for the law, were thus clearly enunciated on the trial of Mr. Hansard:

"There is no doubt that by the law of this country, and of all other civilized countries, a printer or bookseller is answerable criminally as well as civilly, for the contents of the books he publishes, no less than the author of them. If indeed the law should be otherwise, reputation, the protection of which is one of the greatest objects of the law, as much as the protection of property, and scarcely less than the protection of life itself, would be wholly unprotected; for if publishers were not answerable, as the authors are generally unknown, slanders might be circulated to any extent, and on any subject, without any possible means of prevention or punishment."*

The doctrine of high treason was explained in this terse sentence upon the trial of Thistlewood:—

"The law has wisely provided (because the public safety requires it), that in cases of this kind, which manifestly lead to the most extensive public evil, the intention shall constitute the crime; but the law has at the same time with equal wisdom provided (because the safety of individuals requires it), that the intention shall be manifested by some act tending towards the accomplishment of the criminal object."†

It was the peculiar felicity of Lord Tenterden that he should have been assisted for so many years by puisné judges of rare endowments, and might always have prayed in aid of his doubts the profound knowledge and intense labour of Sir John Bayley, the unerring sagacity of Sir S. Holroyd, and the pleader-taught precision of Sir J. Littledale. Well seconded by these admirable colleagues, he finished off, as it were, the elaborate fabric, "the polished corners of the temple," of our mercantile laws; and settled on the most solid basis many new and hitherto shifting points in the law of contracts.

One of his very earliest judgments, Baring v. Corrie, 2 B.

* State Trials, vol. xxxiv. † Ib. vol. xxxvi.

& A. 137, is a leading authority as to the duties and character of factors and brokers, and places on the surest footing the distinction between the two characters, the consequences as to set-off, and the rights of third parties which flow from that distinction.

Another of his later decisions, Street v. Blay, 2 B. & Ad. 456, settles the principle of the law on a very nice point, viz. the right of a vendee of any chattels to rescind the sale, and return the goods on the ground of their not corresponding with the warranty.

It was rarely the fortune of the chief to differ in opinion with the rest of the Court, but when these occasions of difference did arise, he enforced his views with equal clearness of reasoning and expression. A remarkable instance of this is given in Laugher v. Pointer, 5 B. & C. 547, where the owner of a carriage hired of a stable-keeper a pair of horses to draw it for a day, and the owner of the horses provided a driver, through whose negligent driving an injury was done to a horse belonging to a third person, Abbott, C. J. and Littledale, J., held that the owner of the carriage was not liable to be sued for such injury, Bayley and Holroyd, Js., dissenting.

"I must own," said the chief justice, "that I cannot perceive any substantial difference between hiring a pair of horses to draw my carriage about London for a day, and hiring them to draw it for a stage on a road I am travelling, the driver being in both cases furnished by the owner of the horses in the usual way; nor can I feel any substantial difference between hiring the horses to draw my own carriage on these occasions, and hiring a carriage with them of their owner. If the temporary use and benefit of the horses will make the hirer answerable, and there be no reasonable distinction between hiring them with, or without, a carriage, must not the person who hires a hackney coach to take him for a mile or other greater or less distance, or for an hour or longer time, be answerable for the conduct of the coachman? Must not the person, who hires a wherry on the Thames, be answerable for the conduct of the waterman? I believe the common sense of all men would be shocked, if any one

should affirm the hirer to be answerable in either of these cases."

The whole of this astute argument, which has been since sanctioned by the Court of Exchequer, will well repay the lawyer's diligent study. Nor will he fail to notice the case of Rennell against the Bishop of London, 7 B. & C. 113, where the chief justice decided, contrary to the judgment of the rest of the Court, that the personal representative of a prebendary had not the right of presentation, when the prebendary, who had the advowson of a rectory in right of his prebend, died whilst the church was vacant.

Acting on the principle that the law is the perfection of reason, it was the principal study of the chief justice to make his decisions accord with common sense and substantial justice. A reasonable distinction, a reasonable interpretation of the law, were his favourite phrases. He shrunk from the reductio ad absurdum, and abhorred over-curious subtleties. Thus, in construing an act of parliament, which Lord Ellenborough had before interpreted, he differed with his predecessor in thinking that an *agreement with intent* to control might possibly not be an *agreement to control.*

Lord Tenterden decided, according to his usual good sense, that a combination for the purpose of obtaining, and a combination to obtain, an advance of wages, were the same.

When a learned chancery lawyer argued at length, that a devisee in fee by deed could not disclaim the estate devised, he would scarcely listen with patience to such paradoxical reasoning. The law, he said, is certainly not so absurd as to force a man to take an estate against his will: Mr. J. Ventris expressly states, "that a man cannot have an estate put into him in spite of his teeth;" a remarkable instance, by the way, of the different phraseology used by modern and ancient judges.

The Chief Justice loved to overrule technical objections both in civil and criminal pleading. An indictment, Rex v. Somerton, 7 B. & C. 465., had charged that Mary Somerton, being servant on a day named to one Joseph Hellier, on the same day stole his goods. The prisoner being convicted and sentenced to transportation for fourteen years, the record was removed

by writ of error. The errors assigned were, that the indictment did not warrant the judgment, as it was not sufficiently alleged, that she was servant, at the time of the committing of the larceny. Lord Tenterden decided against the objection. "If we were to hold that the allegation, that on such a day, the prisoner, being the servant of J. Hellier, did on the same day steal the goods of J. Hellier, did not import that she stole his goods at the time when she was his servant, we should expose ourselves to the reproof expressed by a very learned and very humane judge, that it is a disgrace to the law that criminals should be allowed to escape by nice and captious objections of form."

Cautious to a fault, and little tolerant of innovation as he was, we may well imagine his astonishment, when the Court was moved for a prohibition to the Lord Chancellor sitting in bankruptcy. Ex parte Cowan, 3 B. & A. 123.

"We wish not to be understood," said the chief justice, "as giving any sanction to the supposed authority of this Court, to direct such a prohibition. It will be time enough to decide the question when it necessarily arises, if ever it shall do so, which is not very probable, as no such question has arisen since the institution of proceedings in bankruptcy, a period little short of 300 years. If ever the question shall arise, the Court, whose assistance may be invoked to correct an excess of jurisdiction in another, will, without doubt, take care not to exceed its own."

In the exercise of a similar prudent reserve, lest he should transgress his authority, Lord Tenterden refused an application by Wooler to compel the benchers of Lincoln's-Inn to permit his call to the bar. 4 B. & C. 658.

"I am of opinion that this Court has no power to compel the benchers of this society to permit any individual to become a member of the society, or to assign any reasons why they do not admit him. It has been argued that every individual has primâ facie an inchoate right to be a member of one of these societies, for the purpose of qualifying himself to practise as a barrister. It might as well be said, that every individual had an inchoate right to be admitted a member of

a college in either of the universities, or of the College of Physicians, or any other establishment of that nature."

A judge so cautious and profound could be rarely in the wrong. With the candour of a great lawyer he displayed a prompt alacrity to admit and correct his errors in the perhaps score of cases in which it might be thought that he had misdirected the jury, or mistaken the bearings of a case at nisi prius.

One of the few heresies for which he was condemned by Sir E. Sugden, and which he recanted before his death, consisted in ruling that the jury were warranted in presuming the surrender of a term created in 1782 to attend the inheritance, and never dealt with in any subsequent conveyance till 1819. Doe v. Hilder, 2 B. & A. 784. No such presumption had ever before been made against the owner of the inheritance, and Lord Eldon refused to recognize this novel and dangerous doctrine.

The chief justice laid down another proposition of real property law too decidedly (Partridge v. Bere, 5 B. & A. 604), that a mortgagor, in possession of the premises mortgaged, was tenant to the mortgagee, within the strictest definition of that word.

He also confined the rule of professional confidence within too narrow limits. But when we consider the multiplicity and complicated nature of the causes which he had to decide on the instant, our wonder is, not that he sometimes stumbled, but that he was so frequently correct. His mode of trying a patent cause, involving new principles of science, was perfect. "No man," writes Lord Brougham, "can doubt that a familiar acquaintance with mathematical principles, mathematical methods of demonstration, and the doctrines of mechanical and of chemical science, is of unspeakable importance to the practical lawyer. If any one doubted this before hearing Lord Tenterden try a patent cause, all his doubts must then have vanished for ever. After that, he was more likely to over-value than to underrate this accomplishment."

All his faculties and energies, to the great hazard both of temper and health, appeared totally absorbed in clearing

away the vast accumulation of causes. It was a subject of astonishment, when Lord Ellenborough had a list laid before him at Guildhall of 588 causes entered for trial. Under the aching sight of his successor there sprung up the vast array of 850. The average number, which in the comparatively easy times of Lord Mansfield scarcely ever reached 200, and when Lord Kenyon was chief justice fluctuated between 200 and 300, expanded in Lord Tenterden's time to 600, and sometimes 800! Hence arose his eagerness to cut off all the fringes of rhetoric—his occasional outbreaks of temper—his asperity to counsel who ventured to prolong a discussion, which the judge might think superfluous, but which the client and his advocate deemed of paramount importance.

The mortified exclamation which sometimes escaped him, when a third counsel rose, "What! another!" was made in a tone the least mild and encouraging, that could well be imagined, to a young beginner. When a chancery barrister argued some issue from that Court relating to outstanding terms, in which the length of his argument threatened to bear too exact a proportion to the period for which the term had been created, the impatient chief justice broke in—"Human patience may bear this, but mine cannot." No one assented more heartily to the truth of Mr. Justice Taunton's saying, that tenuity weakens strength; no one counted the minutes on the clock and the slow progress in business with more anxiety.

"He never," writes Lord Brougham, "could endure the 'trick' of the bar as displayed in its leading advocates; nor was there any great harm in this, had it stopt here. But he seemed always to suppose that an address to a jury could be framed on the model of a special plea, or the counts of a declaration, only without the prolixity and repetition habitual with special pleaders, and to forget that the surest way of bringing out the truth in any case is to let the conflicting feelings and interests of parties come into their natural collision. His impatience was thus very manifest, and, had his nerves been in the same proportion firm, as his dislike to declamation and illustration was strong, a struggle would have ensued, in which the eloquence of the bar would either have been extinguished, or have silenced and discomfited the

bench. In like manner, when, during the interlocutory discussions with the counsel, whether in motions in banc, or on objections taken before him at *nisi prius*, he was uneasy, impatient, and indeed irascible, at nothing so much as at cases put by way of trying what the Court had flung out. Being wholly void of imagination to supply cases in reply, and even without much quickness to sift the application of those put, he often lost his temper, and always treated the topic as an offence. But it was chiefly in obstructing cross-examination, which he wholly undervalued from his utter incapability of performing his part in it, that his pleader-like habits broke out. Had he been submitted to in this matter, cross-examination would have been only known as a matter of legal history. His constant course was to stop the counsel by reminding him that the witness had already said so, or had already sworn the contrary, and this before the question was answered; to which it was natural, and indeed became usual, for the counsel to make answer, that this was the very reason why the question had been asked, the object being, either to try the witness's memory, or to test his honesty."

It must be confessed that, in compelling despatch, the impatient, because overburdened, judge was too apt to mistake asperity for energy, and to chide with harshness, when a slight admonition, or dignified rebuke would have sufficed. "I do not like," said the late Mr. Curran, when Master of the Rolls, in one of his apt metaphors, "to appear in the character of a drill-sergeant with my cane rapping the knuckles of a private, when I become a colonel from the ranks."

The causticity of the chief sometimes expressed itself in all the terseness of epigram, and led to dramatic scenes with the antagonist and offending counsel.

When Mr. Brougham opened an action for the amount of a wager laid upon a dog fight, which, through some unwillingness of dogs or men, had not been brought to an issue, "We, my lord," said the advocate, "were minded that the dogs should fight." "Then I," replied the judge, "am minded to hear no more of it! Call the next cause."

One day in banc a learned gentleman, who had lectured on the law, and was too much addicted to oratory, came to

argue a special demurrer. "My client's opponent," said the figurative advocate, "worked like a mole under ground clam et secretè." His figures and law Latin only elicited an indignant grunt from the chief justice. "It is asserted in Aristotle's Rhetoric"—"I don't want to hear what is asserted in Aristotle's Rhetoric," interposed Lord Tenterden. The advocate shifted his ground and took up, as he thought, a safe position. "It is laid down in the Pandects of Justinian"—"Where are you got now?" "It is a principle of the civil law"—"Oh, sir!" exclaimed the judge, with a tone and voice, which, to a punster's ear would have abundantly justified his assertion, "we have nothing to do with the civil law in this court."

In a similar testy mood, being weighed down by that illness which terminated fatally, when a serjeant had taken up time, as he thought, unnecessarily, and asked, among other dodging questions, if witness had not seen the gentleman drive off in a yellow chaise, the judge inquired sneeringly, whether his brother would not like to know the colour of the post-boy's jacket.*

His rebukes on any classical blunder were administered with severity, in marked contrast with the forbearing and playful gentleness of succeeding judges. It was lucky for the author of the following solecism that he had laid the record in the Common Pleas. A libeller having introduced the hackneyed line from Virgil—"Timeo Danaos et dona ferentes," the pleader who drew the declaration, in translating this line, rendered it, "and those bearing gifts." An objection was taken to this mis-translation on special demurrer, but the chief justice contented himself with the quiet sarcasm, "It was not so translated when I was a young man." The provocation was certainly as great as that which startled Lord Mansfield from his amenity, when the counsel pronounced the second syllable of *jamdudum* short.

The witty reproof of a living judge, addressed to a barrister, who, with a still more startling contempt of prosody, talked of a nolle prosēqui on the last day of term, "that

* Trial of the Mayor of Bristol.

he ought not on that day to lengthen things unnecessarily," was alien to Lord Tenterden's temperament, who could not disport himself in court.*

This severity, partly the result of over labour and partly of disease, communicated its character to his handsome and majestic features in latter days. Sallow and care-worn, they seemed to borrow the expression of the lion in the royal arms, on the tapestry which hung behind him. With determined manner he frowned down the forlorn attempt at raising useless or idle quibbles, and harshly stopped all unnecessary speech.

But though he thus contrived to keep the bar in admirable discipline, he was not free from the weakness of favouritism, and he listened to those in the front or back benches with a very different expression of countenance and manner. One counsel, the late Chief Baron of the Exchequer, had especially the ear of the court, but for this evident partiality he was indebted to his own excellent tact in saving time, by never pressing a case unnecessarily, and by always knowing the exact point where to yield. The jealous sense which the bar evinced of this partiality, was well expressed by Mr. Adolphus. The favourite having remarked sarcastically, "There is a difference between the practice here, and at the Old Bailey;" his antagonist retorted, "I know there is. There the judge rules the advocate: here the advocate rules the judge."

This acute and dexterous lawyer used to confirm his preaudience by well timed delicate flattery. Having moved for a new trial on the ground of misdirection, he prefaced his motion with an explanatory remark that he had taken an accurate note of the summing up, which he only did when he conceived there was a misconception on the part of the judge, which did not happen with regard to his lordship three times a year. The chief justice was evidently gratified, and

* Yet what extraordinary force may be thus added to the rebuke! Baron Garrow being annoyed in summing up by a loud talking below the bench, paused, and leaning over, said in a calm, almost apologizing, tone, "I am afraid, gentlemen, I interrupt your dialogue." The delinquents looked aghast, and the smiling judge met with no further interruption.

observed with a smile, "I fear, Mr. Scarlett, that you do not take notes as often as you ought to do."

"Lord Tenterden," we are assured*, "showed no little variety of firmness and of temper on different occasions, and towards different persons. Of him it might be said that he had a different measure of patience and courtesy for different classes, even for different individuals. It could not be said of him, that he was no respecter of persons. The bar felt this somewhat, the witness felt it more, the parties never felt it at all. Its scope was confined to the mere accident of outward behaviour and manners — nothing beyond. When on one occasion he had, with some roughness, addressed to a witness, who was looking another way, an advice, not unusual with him, and not very delicately couched, 'to hold up his head, and speak out like a man,' it was amusing to observe the fall of both countenance and voice, when the witness turned upon the judge the face of the Chairman of the Honourable East India Company!"

Witnesses of less consideration, who spoke in tones not sufficiently loud, or used terms of circumlocution and betrayed trickery and deceit, were chid in accents of severity, sometimes commensurate with, but more frequently greater than, the provocation. At a trial at Nisi Prius, a surgeon was asked if he would have prescribed the same as Dr. Edwards. He looked at the prescription and replied, "I should have prescribed diametrically opposite. I should consider that prescribed by Dr. Edwards as adding weight to a porter's back." Abbott, C. J., corrected the flippancy of the witness with much propriety. "Don't speak metaphorically; you are speaking just now of a gentleman of experience and respectability. I don't wish you to conceal your opinion, but only to speak it in different language."

Direct, penetrating, caustic, the chief justice was impatient of any thing circuitous or evasive; he detected vanity in its most secret lurking places, and penetrated every disguise. All felt his lash: the pert haberdasher, who talked of the warehouse instead of the shop; the conceited attorney, who, by a vulgar error deeming the term more honourable,

* Lord Brougham's Statesmen.

described himself as solicitor; the pedantic surgeon, who could not speak plain English, or answer the most simple question intelligibly. The judge would have a direct reply, and, according to the amusing anecdote recorded in the Quarterly Review, carried his determination into the society of private life:—

"He had contracted so strict and inveterate an habit of keeping himself and every body else to the precise matter in hand, that once, during a circuit dinner, having asked a county magistrate if he would take venison, and receiving what he deemed an evasive reply somewhat to the following effect: 'Thank you, my lord, I am going to take boiled chicken;' his lordship sharply retorted, 'That, sir, is no answer to my question; I ask you again if you will take venison, and I will trouble you to say yes or no without further prevarication!'" The story must however be presented in masquerade dress, — it must be a patched and rouged anecdote, for the chief justice was far too well mannered a man when presiding as host at his own table to address to a guest so tart and sarcastic a reply.

His nice sense of justice kept in check any undue display of rigour towards defendants. He tried Hone with singular temper, and was even charged with displaying more gentleness to the accused than was agreeable to the boisterous Lord Ellenborough, who rose from a sick bed to compel a verdict of guilty.

But though tolerant, Lord Tenterden could rebuke a defendant, who exceeded the bounds of licence, with extreme bitterness. When Carlile complained on some point being ruled against him, that he would have met with more justice in a Turkish court, "More summary justice undoubtedly," replied his lordship, "for the bow-string would have been round your neck an hour ago."

His severity to libellers may be accounted for, and in part justified by his respect for the constituted authorities, his abhorrence of all unjust attacks on character, and strict love of truth. In making absolute a rule for a criminal information against Mr. Whittle Harvey, who had written in his newspaper, "We speak from authority, that the malady under

which his Majesty labours is of an alarming description," the judge remarked:—

"If any writer thinks proper to say, that he speaks from authority, when he informs his readers of a particular fact, and it shall turn out that the fact so asserted is untrue, I am of opinion that he, who makes the assertion in such a form, may be justly said to make a false assertion. I am not a sufficient casuist to say, that, to call it an untrue assertion, would be a more proper mode of expression."

His stubborn regard for truth resembled that of George III. when he expressed his repugnance of Lord Chesterfield's subtle distinction between simulation and dissimulation. "This may be all very deep and clever, but I like more straightforward work."

In his hatred of seditious libels, Lord Tenterden may have sometimes pushed the rigour of the law too far. The principle advanced in Rex *v.* Burdett, 4 B. & A. 159, admits of question. "The composition of a treasonable paper intended for publication has on more than one occasion been held an overt act of high treason, although the actual publication had been intercepted or prevented, and I have heard nothing upon the present occasion to convince my mind that one who composes or writes a libel with intent to defame, may not, under any circumstances, be punished, if the libel be not published."

But all who peruse that admirable argument, even whilst they dissent from some of the positions laid down, cannot fail to admire the singular clearness and force of his remarks on the doctrine of presumption, and the classical beauties of his style.

Though too forbearing and cautious himself to fine even a seditious libeller for contempt, when in the course of his defence addressing unwarrantable remarks to the jury, Lord Tenterden upheld the more intrepid discretion of a brother judge, who had mulcted a defendant in 20*l.* for saying on a threat to restrain him: "My Lord, if you have your dungeon ready, I will give you the key;" and again 40*l.* for his cool impudence in asserting "the bishops are generally sceptics." Whilst refusing the rule for a new trial, Rex *v.* Davison, 4 B. & A. 433, the chief justice warmly defended the exercise

of that power, which was vested in the judges for the protection of the public, and which Mr. Justice Best had exerted:—

"I quite agree that this power, more especially where it is to be exercised on the person of a defendant, is to be used with the greatest care and moderation. But if the publication of blasphemy and irreligion cannot in any other way be prevented, in my opinion a judge will betray his trust, who does not put it in force. An allusion has been made to my own personal conduct on a former occasion (Carlile's trial). I have often doubted whether I did not in that case permit too much to be done, but I thought then that it was better to err on the side of forbearance. The question here is, if a judge sitting at Nisi Prius has power to impose a fine on a defendant for a contempt. That he has power to do so, I can entertain no doubt, no lawyer can doubt the power of every court to fine for contempt. As to the particular occasion on which these fines were imposed, I disclaim any right to judge of it, but I should be wanting to myself and to my feelings, as well as my duty to others, if I did not say that, in the view that I have taken of this case, it is most manifest that the defendant came into court with an express design to revile the Christian religion. It became the duty of the judge to prevent him from so doing by the imposition of a fine, when he found that remonstrance had not that effect."

In exact proportion to his dislike of libellers was Lord Tenterden's warm attachment to that valuable body of English gentlemen, the unsalaried county magistracy. "To that class of persons," he said, "the nation is most peculiarly indebted for valuable and gratuitous services, and no man can have the good of his country at heart, who seeks to displace them."

When a criminal information was moved against a Lancashire magistrate, Rex v. Borron, 3 B. & A. 433, for refusing to investigate a charge against some other magistrates for acts done in another part of the county, Lord Tenterden directed the rule to be discharged with costs, and the costs to be paid by the attorney.

"The application is made against a gentleman, who is one of that class to whom this country is under as great obligations as this, or any other, nation is, or ever was, to any members of

its community. To punish as a criminal any person, who, in the gratuitous exercise of a public trust, may have fallen into error or mistake, belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom."

Heartily concurring in the justice of this decision, we may yet be permitted to question the propriety of some other judgments in cases relating to the magistracy, one or two of which we have noted as interesting in themselves, and marking the character of his mind.

A rule had been obtained against a clerical magistrate, the Rev. Mr. Broughton, for having illegally, corruptly, and oppressively conducted himself in committing to prison two children, a brother and sister, of the ages of ten and seven. He had committed them on the charge of stealing two ducks, which were swimming in a pool on the common, and which they wanted to make fight. Lord Tenterden discharged the rule on payment of costs, as there was not enough to fix on the justice the imputation of having acted from corrupt and malicious motives, but added a severe rebuke:—

"Certainly considering the age, and the circumstances under which these children were brought before him, a discreet and commonly humane man might reasonably be induced to pause, before he committed such tender infants to a common gaol. There was another part of the conduct of this gentleman, which the court could not too strongly reprobate, viz. that of having taken the deposition of Barlow, the prosecutor, in privacy, behind the back of the persons accused."

The children's father afterwards recovered 100*l.* damages against Barlow; and we think too highly of the body to which this cruel magistrate belonged, to believe they would have felt aggrieved, had the Queen's Bench unsheathed the sword of justice against him.

The chief was with much difficulty persuaded, upon another occasion, to grant a mandamus, commanding certain magistrates of Devon to renew the licence of a public-house within their division. They had refused to renew it for a reason in law palpably absurd, because the sign of the house

had been thrown down, and was in the hands of the painter to repair. On the suggestion of Holroyd, J., for a mandamus to hear and determine, Lord Tenterden said, "You may take a rule and see what you can do with it. If the magistrates are disposed to review their decision, on being given to understand they have mistaken the law, they can be informed of that fact on very good authority, without the interference of this Court. I am unwilling to grant a rule in any case, in which I am not satisfied that this Court has the power to do that, which the rule seeks to obtain."

Notwithstanding this constant and sometimes excessive protection, though the incorrupt judge ever held the shield of the law before magistrates when assailed, and covered them with the robes of justice, he was wholly innocent of all interested motives, and acted as their protector from the purest dictates of patriotism. Some prejudice may have been blended with his high Tory principles, but he maintained his opinions consistently to the last without any respect to personal aggrandizement.

So far from studying his own advantage, Chief Justice Abbott never asked a political favour during the ten years that his friend Lord Eldon continued to hold the seals, and partly from his own indifference and partly from the Chancellor's aversion for legal peerages, did not even obtain that rank to which his station entitled him. It was only in 1827, when the new ministry thought proper to introduce into the House of Lords two other eminent members of the law, Lord Lyndhurst and Lord Plunkett, that Mr. Canning, the Premier, in a few beautiful words of high acknowledgment of the merits of the chief justice, offered him a peerage in his majesty's name, as due to the exalted office he filled, and the exemplary manner in which he had discharged its duties. His letter dated 19th April, 1827, after an introduction of graceful eulogy, continues,—"As in the approaching law promotions, more than one peerage will be conferred by his majesty; it has occurred to Mr. Canning, as due to Lord Chief Justice Abbott, to his lordship's eminent services, and to the dignity of the court over which he presides, that an opportunity should be afforded to the Lord

Chief Justice to express his wish (if he entertains it), for a similar honour." He was accordingly raised to the peerage by the title of Baron Tenterden, the name of a town in his native county, Kent, to which, from early associations, he was particularly attached.

The new Baron was introduced into the House on the 2nd of May, 1827, by Lords Bexley and Kenyon, and followed to the bar, as a token of their respect, by a large proportion of the counsel who practised in his court. His début as a speaker was in support of Miss Turner's divorce bill, which he warmly advocated on the ground of doing substantial justice, denouncing the conspiracy by which that unfortunate young lady had been purloined from school, as one that had originated in the basest motives of lucre, and had been conducted by force and fraud. "Their lordships," he urged with the full assent of his hearers, "should teach such conspirators there was a power in the legislature to prevent them from reaping any fruit from their crimes."

Siding heart and voice with the Tory party, he withstood manfully, but without success, those measures of liberal concession, as they were termed, which from the period of his entering parliament began so thoroughly to colour their sayings and acts. Resolute against the passing of the Corporation and Test Act Repeal Bill, he proposed as a measure of the last resource, that the chief magistrate in all corporate towns should make the following declaration: — "I entertain no opinion on the subject of religion, which can, or may, prevent me from attending the morning and evening service of the Church of England as set forth in the Book of Common Prayer." In an amendment so distasteful to the Dissenters generally, the chief justice met with very slight concurrence, the Contents being 22, Non-contents 111.

Against the Roman Catholic Relief Bill, Lord Tenterden, though not an orator, spoke with great ability, and was listened to with marked silence and respect. He denied in a spirit of prophecy that this measure would satisfy the Catholics. "Nothing would follow from it but a delusive and temporary calm — nothing but that fatal stillness which was the certain indication of an approaching storm. Parliament

would in future have to struggle against a combination of physical and political power." When Dr. Lloyd, then Bishop of Oxford, startled the Lords with his declaration, "I agree that every idolater must be guilty of idolatry before his God. I do not believe the Roman Catholics are so, and I will not asperse those from whom I differ," adding, "None but a tyro in logic could draw the conclusion that idolatry and idolatrous meant the same thing"—Lord Tenterden, who detested sophistry, retorted with much warmth, "It is now forty years since I was a tyro either in logic or grammar, and I may perhaps have forgotten the very elements of the science; yet I beg leave to say, that I have learnt nothing since, which enables me to distinguish, that a superstitious act is not superstition, or an idolatrous act is not idolatry. *

The excess of his judicial labours, which allowed no respite either in Court or out of it, caused the chief justice during the next two years of doubt and difficulty, "with fear of change, perplexing nations," to intermit in a great measure his attendance in the House of Lords. But when the Reform Bill hung as a heavy cloud on the destinies of the nation, Lord Tenterden returned to record his protest against a measure, which went to invest all the power of the state in the Lower House of Parliament, which would leave nothing for the Lords but to obey the dictation of the Commons and register their edicts. "Never (said the noble lord in a tone of indignant vehemence), never shall I enter the doors of this house after it has become the phantom of its departed greatness." His sentiments were delivered with such clearness, and bore upon them such an impress of sincerity, that the Bishop of Rochester declared he thought the speech of the chief justice the most impressive and convincing, that had been delivered on their side of the question; a high compliment to his power, as all the peers, the most renowned for eloquence, had spoken.

Whilst Lord Tenterden, with a reserve becoming his high station, abstained from party conflicts, and only spoke on occasions of enduring interest, he took an active part in the

* Parliamentary Debates for 1828.

task of legislation, and contributed all the stores of his cautious wisdom and legal acumen, to the amendment of the laws. Adopting in part, and improving, the recommendations of the Common Law and Real Property Commissioners, he has frequently stamped his name upon our statute book as a legal reformer. The most salutary of his well-studied and carefully prepared acts are those: — 9 Geo. IV. c. 14, for the Alteration of the Law as to the Limitation of Actions: and 9 Geo. IV. c. 15, to prevent a Failure of Justice by Reason of Variances between Records and Writings produced in Evidence. Another most useful statute for the limitation of actions, 3 & 4 Will. IV. c. 27, prepared under his sanction, has swept away indiscriminately between fifty and sixty different species of actions, the fertile source of difficulty and confusion.*

The faithful friend of the chief justice has proved by an authentic record (his own letter) how diligently he strained all his energies to the task of reformation, at how much private cost he laboured for Sir Edward Coke's benediction, Blessed be the amending hand!

"In 1830," writes Sir Egerton Brydges, "the two months following the summer circuit, almost the only period of relaxation throughout the year, were devoted by this distinguished man to the preparation of measures of this kind, as appears by a letter which I received from him in the September of that year: — 'You are probably aware that we had three commissions, one on the practice and proceedings of the superior Courts of Common Law, another on the Law of Real Property, and a third on the Ecclesiastical Courts. Two reports have been made by each of the two first, none by the latter, of which I am a member. The reports contain recommendations and proposals for many alterations, some of which I think useful and practicable. Something however must be done by the legislature to satisfy the public mind, and, under this impression, I have employed myself, since the circuit, in preparing no fewer than five bills, intended chiefly to give some further powers to the common

* Warren's Introduction to Law Studies.

law Courts, and make some alterations in the practice, but without infringing on any important principle, adopting some of the recommendations with some alterations from the proposals. I wish it were possible to cure the evil you so justly complain of. Whatever shortens and simplifies will be calculated to save expense, but acts of parliament cannot make men honest. I doubt whether an act to subject bills for conveyancing to taxation would effect much, as I think they ought to be. I would willingly promote such an act, but if I bring my five bills before parliament, I shall have done at least as much as I ought to do, and perhaps more, though, to say the truth, I have one more bill on the anvil and have had for at least three years without courage to propose it. It has had much of the limæ labor. Indeed, to say the truth, this limæ labor is an occupation by no means disagreeable to my mind."

His long vacation, the sacred month of the lawyer, was, however, in general solaced by still more congenial recreations and repose. As the virtuous Fearne turned to chymical pursuits for what he called his dissipations, this severely tasked judge took up botany to occupy his leisure hours, and wrote some elegant Latin poems on flowers and plants. He read poetry, especially the classics, with great feeling and taste; but he had neither sympathy with, nor patience for, the modern school. His apology to Sir Egerton Brydges for condescending to trifle in the regions of Latin metre is highly characteristic:

"I have always felt that it might be said that a Chief Justice and a peer might employ his leisure hours better than in writing nonsense verses about flowers. But I must tell you how this fancy of recommencing to hammer Latin metres after a cessation of more than thirty years began. Brougham procured for me from Lord Grenville a copy of some poems printed by him under the title of 'Nugæ,' chiefly his own, one or two, I believe, of Lord Wellesley's, written long ago, and a piece of very good Greek humour by Lord Holland. The motto in the title-page is four or five hendæcasyllabic lines by Fabricius. At the same time John Williams of the Northern Circuit, now the Queen's solicitor-general (at pre-

sent one of the puisné judges of the Queen's Bench), who is an admirable scholar, sent me four or five Greek epigrams of his own. I had a mind to thank each of them, and found I could do so with great ease to myself in ten hendæcasyllables. This led me to compose two trifles in the same metre on two favourite flowers, and afterwards some others, now I think twelve in all, in different Horatian metres, and one, an Ovidian epistle, of which the subject is the Forget-me-Not. One of the earliest is an ode on the conservatory in the Alcaic metre, of which the last stanza contains the true cause, and excuse of the whole, and this I will now transcribe:

> " ' Sit fabulosis fas mihi cantibus
> Lenire curas! sit mihi floribus
> Mulcere me fessum, senemque
> Carpere quos juvenis solebam.'

"You see I am now on my hobby, and you must be patient while I take a short ride. Another of the earliest is an ode in the Sapphic metre on the Convallaria Maialis, The Lily of the Valley. I am a great admirer of Linnæus, and my verses contain many allusions to his system, not, however, I trust quite so luscious as Darwin's Loves of the Plants, which, I believe, were soon forgotten. I have not seen the book for many years. I have one little ode written in the present year on a plant called the Linnæa Borealis, which, Sir J. Smith tells us, was a name given to it from its supposed resemblance to the obscurity of the early days of the great botanist, It is not common, and possesses no particular attraction. Smith says it has sometimes been found on the Scottish mountains, and I have a plant sent to me last spring by Dr. Williams. I will send you a copy of this also. You must give me credit for the botanical correctness of the first part, of the rest you can judge, and you may criticise as much as you please. There are three other metres of Horace on which I should like to write something, but what, or when, I know not. It is now high time to quit this subject."

The poem which follows is remarkably elegant and correct, worthy of a place by the side of Cowper's favourite Vinny Bourne. The few friends who were favoured with copies of

these lyrics were much pleased with the classical imitation of the celebrated passage in Horace:

> " Sic et Europa niveum doloso,
> Credidit tauro latus."

It occurs in the ode which his letter alludes to, describing the Lily of the Valley (Convallaria Maialis). After some elegant preceding lines, the plant is mentioned as —

> " Flosculis nutans oneratus albis,
> Non ebur lucet Pariumve marmor
> Purius, nec quæ decorat pruina
> Cana cupressos.
> Taliset pectus niveumque collum,
> Advenâ viso, pudibunda texit,
> Insulæ virgo, leviterque cymbam à
> Littore trusit."

The ode concludes with several other stanzas, closely translated from many beautiful lines in " The Lady of the Lake." For his elegant and scholar-like amusement the Chief Justice had many eminent authorities both amongst lawyers and statesmen. The Quarterly Review in its review of Arundines Cami, (No. 138.) gives a copy of verses by Serjeant Lens, Ad Amicum, most easy and graceful; also Latin specimens of youthful religious verse and versification of the Te Deum by Dampier. Latin verse afforded amusement to the declining years of Lord Grenville and the Marquis of Wellesley; nor should we have now to quit the bench in search of elegant and classical authors of Greek verse. It is pleasant to see the mind of the Chief Justice in his old age thus cheered and refreshened by classical associations, to witness such a practical refutation of the disheartening theory, that a deep study of the law extinguishes all poetical feeling,—that a lawyer's mind is a barren ring, when once preoccupied with cases,—that, according to Cowley's beautiful image:

> " Where once such fairies dance, no grass doth ever grow."

The following letters, written by the aged peer to his steadfast friend, relate to themes of a more prosaic character, and

are strongly symptomatic of carking care, of infirmity, and decay.

"Russell Square, May 20th, 1832.

"My dear Sir Egerton,

"I have made several attempts to write to you, but have found myself unable to do so; nor can I now write as I ought and wish to do. My spirit is so depressed that, when I am not strongly excited by some present object that admits of no delay, I sink into something very nearly approaching to torpidity. My affection for you remains unchanged. God bless you.

"Your most affectionate friend."

In another letter dated June 8th, 1832, in answer to some improvement of the law, proposed to be adopted by Sir Egerton from the Code Napoleon, he writes: —

"I am sure it never would be adopted without the sanction and efforts of the ministry, or, in future times, of those, who, through a nominal ministry and a nominal king will be the real governors of the state. A bill for settling disputes by arbitration under the authority of a judge, introduced into the House of Lords, on the recommendation of the commissioners relating to the courts of common law, has now been for some months before the House of Commons, being sent from the House of Lords. It was sent there twice before, and died a natural death by prorogation, or dissolution, and, from all I hear, is likely to die in the same way this third time, though I have now removed all objections by confining the power of the judge and court, not merely to cross demands of more than two items on each side, as before, but to the cases wherein one of the parties desired such reference. But it seems this will not satisfy some persons, and I am told that it cannot be brought before a committee till after midnight, and whenever it has been so brought on, an opponent desires the House to be counted, and the requisite number of members are never found to be present. Another bill introduced by me on the same recommendation, being uniformity of process in the several courts of law at Westminster, found no opponent in the Commons, passed very glibly through its several stages, and has received the royal assent. I have two more bills now in the Lords, which passed, and went to the Commons last session as one bill, and there died a natural death. The same thing will probably happen this session, and should it be so, I must think I have received a sufficient

admonition to interfere no farther in such matters. We differ upon the great measure that has so long agitated the country. I consider the Catholic Bill as the first, and this as the second step to overturn all the institutions of the country. In my anticipations of the effect of the first I have certainly not been mistaken. The present state of Ireland proves this. Would to God I may be mistaken in the effect of the Reform Bill. Great alarm was felt yesterday from the accounts of a proceeding at Paris as published in the *Times*. I learn to-day that this has subsided, and that the government prevailed in the conflict. I have no confidence in a temporary triumph over a principle that, I believe, was never subdued, and can only be restrained by unremitting coercion."

The following letter was written a fortnight before the death which it so clearly heralded:

"My dear Sir Egerton,

"I came to town yesterday to attend His Majesty on the Recorder's report, and have received your letter this morning. I have lately suffered, and am still suffering, very severely from an internal complaint, which they call an irritation of the mucous membrane. It troubled me during all the circuit. I got rid of it for a short time at Leamington, but it soon returned with greater violence, and has for some time deprived me of appetite, and produced great depression of spirits. Sir Henry Halford, however, assures me that a medicine he has ordered me will in time remove the complaint, and my confidence in him induces me to trust it may be so, though after a trial of six days I cannot say that I find any sensible improvement. God bless you.

"Your most affectionate friend."

We admire the saying of a veteran in the profession, that he would die like a camel in the wilderness, with his burden on his back. Lord Tenterden acted to the last upon the spirit of this declaration. Notwithstanding his infirm health, he presided over the trial at bar of the Mayor of Bristol for misconduct at the riots, and sat out the first two days of that protracted and important trial. On the third day a violent attack of inflammation confined him to his bed, from which he never rose. The united skill of Sir Henry Halford, Dr. Holland, and Mr. Brodie were baffled by the strength of the disease, and on the morning of Sunday, November 4. 1832, this venerable judge expired.

Just before his death, being delirious, and his mind reverting to the trial at bar arising out of the Bristol riots, he said faintly, "Gentlemen of the jury, you may retire." So full of its duties was the judicial mind to the last.

The funeral was strictly private, in accordance with his express desire. Low-minded in his high estate, he deprecated the empty ceremonial of a long procession 'blackening all the way,' and a gorgeous monument. Two epithets, most honourable to humanity, may be graven on his tombstone — the humble and the just. He has left a name in the profession that will not die, and many lawyers, we may rest assured, will derive encouragement under difficulties, and fortitude to persevere, from the career of the hair-dresser's son.

His remains were interred in the vaults of the Foundling Hospital, of which institution he had been a governor.

His monument at the south-eastern entrance to the hospital is graced with a modest inscription, written by himself only two months before his death. The following is a copy, omitting the formal parts: —

Prope situs est
Carolus Baro Tenterden.
Filius natu minor
Humillimis sortis Parentibus
Patre vero prudenti matre piâ ortus,
Per annos viginti in causis versatus.
Quantum apud Britannos honestus labor
Favente Deo valeat
Agnoscas lector!

Beneath this inscription there is added, with singular propriety,

Hæc de se conscripsit
Vir summus idemque omnium modestissimus.

CHAPTER VI.

THE LIFE OF LORD STOWELL.

To the south of St. Paul's Church-yard, divided by a few narrow streets from that busy thoroughfare, and unknown to or unheeded by the vast majority of the passengers, stands the College of Doctors' Commons. But few visiters have been tempted to explore its dark and secluded retreats, from the time when Dean Bodewell and other civilians and canonists agreed to dwell in contiguous houses and enjoy a community of board, to the more recent period, when some adventurous rooks planted a colony in the little garden behind the College. It would be difficult to account satisfactorily for the indifference thus evinced by public opinion. Topics are discussed there of stirring interest to all, — questions which affect the comfort, security, and happiness of domestic life, and which, according to a quotation not over new, "come home to the business and bosoms of men." In time of war, decisions on international law were there given, which have tended, almost as much as her naval victories, to exalt this country in the eyes of foreign states, and prove that her civil tribunals know no difference between the alien stranger and the native subject, in awarding to each his respective rights. The spot is hallowed by its association with the memory of that distinguished civilian, Lord Stowell, who adorned those courts as advocate and judge for the space of half a century, and has enrolled his name with the Hales, the Hardwickes, and the Mansfields, in completing and perfecting this peculiar department of the law. In tracing the life of this great and good man, and passing under review those memorable passages by which he must go down to posterity with honour, we shall not fail to collect a few of the intellectual treasures which he lavished there with a copious hand, and which have been there to all appearance sequestered.

Willian Scott was born on the 8th of October, 1745, O. S. He was the eldest son of Mr. William Scott, a pains-taking, shrewd man, who carried on the business of a fitter, as it is technically termed (*i. e.* a tradesman engaged in the shipping and transport of coals), at Newcastle-upon-Tyne. His mother, Jane, the daughter of Mr. Atkinson, a tradesman in the same town, is reported to have been a worthy, clever woman, and was fortunate enough to survive the elevation of two out of three sons to the bench, dying in 1800, at the extreme age of 91. She had thirteen children by her marriage with Mr. Scott, of whom only five attained their majority: William, John, Henry, Barbara, and the last of the three daughters who had been christened Jane. The pedigree of the Atkinson family is thus given in the Rev. J. Hodgson's "History of Northumberland:"—

Henry Atkinson, of Newcastle, Hoastman.

Jane, b. Aug. 31. 1709, ob. July 17. 1800, and buried at All Saints. = William Scott, coal-fitter and merchant, married at Horton Chapel, in the Parish of Woodhorn, Aug. 18. 1740.

1. William Scott (Lord Stowell).
2. Barbara, b. at Heworth, and twin sister of Lord Stowell; ob. in Newcastle, May 3. 1828.
3. Henry Scott, Merchant in Newcastle; ob. Dec. 1799, having married Mary, daughter of Thomas Cooke; had one daughter, Mary = Joseph Forster, of Seaton-Burn.
4. Jane Scott, b. May, 1750; ob. May, 1822; having married Sir Thomas Burdon, Knt.
5. John Scott (Lord Eldon), born in his father's house in Love Lane, Newcastle, June 4. 1751.

The circumstances attending William Scott's birth are so romantic, that they might have better become the nativity of his namesake, the Magician of the North. The rebellion of 1745 was just then at its height; the north of England was in the greatest state of alarm, and the approach of the rebels to Newcastle almost daily expected. The town walls were

planted with cannon, the gates closed and fortified, and every practicable measure adopted to stand a siege. Mrs. Scott, being at that time far advanced in pregnancy, or, to use the more fastidious phrase of Mr. Moore, "in her progress towards maternity *," the family were very anxious to have her removed to a place of more quiet and safety, and conveyed her down the river to Heworth, where Mr. Scott had a country-house, a village about four miles below Newcastle, but on the south side of the Tyne, and in the county of Durham. Here she remained in perfect security, and was soon after delivered of twins, a boy, and a girl named Barbara. Some difficulty intervening to the birth of the second child, Mr. Hallowel, an eminent *accoucheur* of Newcastle was sent for, who, finding the town gates closed for the night, caused himself to be let down in a large basket from the top of the wall, and, as the fit reward of his gallantry, accomplished his task with credit and in safety. The entry in the Registry Book at All Saints' Church, in Newcastle, the parish in which the family resided, is made in the following singular manner: — "Baptized, October, 1745, O. S., William and Barbara, twins of William Scott, hoastman. Certified by the Rev. Mr. Leonard Rumney, curate of Jarro and Heworth; occasioned by the present rebellion."

Newcastle has the advantage, in common with most large towns in the north of England, of an old-established and richly endowed grammar school. Scott was sent there when very young, and continued as a day-scholar to the age of fifteen, a deserved favourite with the excellent masters, from his acute perception and assiduity. The merits of the head-master, the Rev. Hugh Moises, Fellow of Peterhouse, were acknowledged on his death by the then Sir William Scott, in an elegant Latin inscription written for a monument subscribed by his grateful scholars. The four first names on this subscription list any master might be proud of; they are Eldon, William Scott, Collingwood, and Hall (Provost of Trinity college, Dublin). To the earnest advice and recommendation of this excellent man, both the Scotts were indebted for their being sent to Oxford. Their peculiar

* Life of Lord Byron.

retentiveness of memory had attracted his notice at an early age. When asked to give an account of the Sunday sermon, their father's weekly custom, the eldest, William, would repeat a sort of digest of the general argument — a condensed summary of what he had heard; John, on the other hand, would recapitulate all the minutiæ of the discourse, and re-iterate the very phrase of the preacher. He showed a memory the most complete and exact, but failed in giving the whole scope and clear general view of the sermon embodied in half the number of words by the elder brother. Mr. Moises was determined that such talents should not be lost. On the first opportunity, on the 24th of February, 1761, young Scott stood for and gained a scholarship at Corpus Christi College, Oxford, having narrowly escaped the age, sixteen, at which the statutes of that College for some counties — made, one would presume, for the encouragement of such precocious boy-bachelors as Cardinal Wolsey — superannuate candidates. There is a story extant that the English essay which he gave in, was suspected to be too good for his own composition. One of the Fellows sent a copy to Mr. Moises, and hinted the suspicions of the college. The master, piqued for the credit of his scholar, read the essay to the senior boys, and asked them if they thought it above his power. The lads would have it — they were partial critics — that they had known him write better; and Moises thought so too. But the honest pride of the pedagogue was at its height ten years later, when the younger Scott gained the English prize essay "On the Advantages and Disadvantages of Foreign Travel." He entered the school-room with a delighted countenance and an open letter in his hand, exclaiming, "See, boys, what John Scott has done!"

The other master, Mr. Robert Harrison, was also a remarkable man. He had been an attorney, but, failing in a lawsuit, abandoned the profession in disgust, and applied his attention to mathematics, in which he was a proficient. He was an extraordinary linguist, the correspondent of Maseres and Hutton, and distinguished in Newcastle by the title of philosopher Harrison. His reading and memory are said to have been so great, that he could name the exact place in the

book, and in general continue the quotation, in any classical author to which reference might be made in conversation: of his assistance Scott afterwards availed himself in arranging the scheme of his lectures.

With tutors like these, Professor Hutton being also second master for a short time, it is not surprising that Newcastle school should have sent forth into the world in the same year such candidates for glory as Collingwood and Scott, the gainer and dispenser of prizes, the communicants of national honour. Scott was matriculated at Oxford, March 1st, 1761. He is said to have puzzled the Esquire Bedel of the day, who asked him the rank or quality of his father, by replying that he was a *fitter* — a term of art as strange to those classical regions as the names of *piecer* or *knob-stick*, of still more modern manufacture. This strange term startled so much the ears of Dr. Randolph, that he fell into a whimsical mistake. When the candidates had retired, he said gravely, "I think, gentlemen, there can be no doubt that young Scott is by far the best scholar of them all; but he has told us that his father is a fiddler, and I do not quite like to take the son of a fiddler into the college." * The panic of the aristocratic head was luckily appeased, his error rectified, and the name of the apt scholar forthwith entered in the college books: — "Gul. Scott, æt. 15, Gulielmi de Heworth civit: (a mistake, no doubt, for comit:) Dunelm: generosi filius." He was too honest to "write himself *armigero*," the Latin language being less ductile in terms of dignity than our vague English *Esquire*.

Unfortunately for his early fame he had entered the University too soon for an opportunity of public distinction. There were as yet no prizes awarded to the best Latin or English composition in prose — to Latin or English verse. The University, to whose inactive spirit the reproachful epithet of the "silent sister" justly belonged, had not even instituted any public examinations for classical or mathematical honours. How admirably contrasted is her system of the present day! which gives the utmost possible encouragement to the young and emulous, and diffuses an universal

* Twiss's "Life of Lord Eldon."

ardour for the contest in her intellectual games, on whose arena, more frequently than in active life, the race is to the swift, and the battle to the strong. But, in 1761, the germs of that improved system, which has now for nearly half a century supplied England with sound classical scholars, were not yet visible; the candidates for a bachelor's degree were still condemned to the drudgery of doing generals (such was the barbarous jargon of the day) and doing juraments. Even through these obstructions the genius and learning of the Corpus scholar made a way of escape. He took his bachelor's degree on the 20th of November, 1764, and on the 13th of the following month was elected a Probationary Fellow of University College, the lucky chance, which altered the place of his nativity, having rendered him eligible for a Durham fellowship. This excellent college, the eldest daughter, and one of the least of alma mater, had recently been deprived of the valuable assistance of Jones, the celebrated Orientalist, whose gift of tongues was reckoned among the triumphs of Isis. Mr. Scott, then only a bachelor, and in his twentieth year, was elected a college tutor in his stead — a compliment to his learning the more marked when we consider that, in the middle of the last century, there existed a superstitious reverence, a more than Spartan respect, for age. Judges were unpromoted till sixty: old prebendaries tottered to the bench of Bishops, and senior fellows usually found sufficient leisure from the toils of the bursarship to make out bills and superintend education. It redounds to the credit of the fellows of University, that in two instances they should thus have preferred youth and merit to imbecility and age. The prosperous state of the society soon attested the wisdom of their selection. The Earl of Lichfield, Chancellor of Oxford in 1768, instituted two prizes for the best compositions in Latin and English prose, by under graduates above four years', and under seven years' standing. It is a proud testimony to the abilities displayed in the education of the students, that, of the six prizes awarded in the first three years, five should have fallen to University College, the fifth being bestowed on Mr. John Scott. We may well imagine the mutual triumph of the brothers; it seemed as if, prevented

from gaining the prize himself, the University-tutor had been now fully compensated, and had won in the person of his pupil. Mr. Scott took his master's degree in 1767; and on May 30th, 1772, proceeded B. C. L., having determined to pursue the civil law as a profession. His departure from Oxford was delayed by a new honour. In 1774, the members of convocation elected him by a considerable majority to the office of Camden Reader of ancient history, vacant by the death of Mr. Warneford. His opponents were Mr. Bandinel of Jesus, and a Mr. Stapleton of Brazennose; the numbers being, for Mr. Scott, 140; Mr. Bandinel, 115; Mr. Stapleton, 99. The professorship was founded by William Camden in 1622, and endowed with the manor of Bexley in Kent; and never since its institution had it been so ably filled — with so much renown to the individual, and so much credit to the University. His lectures are said to have been attended by the largest concourse of academics ever known, who were equally delighted with the classical elegance of his style, the admirable arrangement of his subject, and the luminous information conveyed by him. In these particulars they successfully competed with the course of lectures delivered by the Vinerian professor, Blackstone, which they equalled (it would have been impossible to have done more) in popularity. The language of Dr. Parr applied to Bishop Bennet not unfitly describes their merits, and the estimation in which the lecturer was held. "To these discourses, which, when delivered before an academical audience, captivated the young and interested the old, which are argumentative without formality, and brilliant without gaudiness, and in which the happiest selection of topics is united with the most luminous arrangement of matter, it cannot be unsafe for me to pay the tribute of my praise, because every hearer was an admirer; and every admirer will be a witness. As a tutor he was unwearied in the instruction, liberal in the government, and anxious for the welfare, of all who were entrusted to his care. The brilliancy of his conversation, and the suavity of his manners, were the more endearing, because they were united with qualities of a higher order, because in morals he was

correct without moroseness, and because in religion he was serious without bigotry."

The éclat of the youthful professor elicited also a modicum of praise from the cynical philosopher of Lausanne, which is the more unsuspicious when we recall his feelings of hostility to academical institutions. "At a more recent period," writes Gibbon, "many students have been attracted by the merits and reputation of Sir William Scott, then a tutor in University College, and now conspicuous in the profession of the civil law. My personal acquaintance with that gentleman has inspired me with a just esteem for his abilities and knowledge, and I am assured that his lectures on history would compose, were they given to the public, a most valuable treatise." To these remarks the Rev. Mr. Milman adds the following note. "These lectures were left on the decease of Lord Stowell in an imperfect state, with a strict injunction against their publication. By the friendly confidence of Lord Sidmouth, one of Lord Stowell's executors, I have been permitted to read these papers. From the extraordinary progress which has been recently made in the study of Grecian antiquities by the scholars of Germany, the lectures which relate to those subjects, would perhaps be found not quite to rise to the level of modern knowledge, but in all there are passages, which, for originality of thought, masculine good sense, and exquisite felicity, will make me regret the sentence which has been passed upon them by the reserve or the diffidence of the author. One lecture in particular, containing a more general view of society, struck me as a masterpiece of composition, and as an example of English prose; peculiar indeed, and characteristic of the writer, but in purity, terseness, and a kind of sententious vigour, rarely equalled, perhaps not surpassed, in the whole range of our literature."*

The copy of these lectures, transcribed with all that care and accuracy which their noble author was accustomed to bestow on his labours, is far too valuable to remain in manuscript, and we earnestly hope that no false delicacy will prevent their

* Gibbon's Works, by Milman. A character of Alexander the Great is also traditionally remembered, as uniting the splendour of the poet with the integrity of the historian.

publication. The veto placed upon it is at variance with the wish which the modest lecturer expressed himself at the time, in a letter to his brother Mr. Henry Scott, dated Oxford, July 17th, 1778. "My lectures were read to the University at large, and I hope not without some degree of credit. I shall read them once more, and then publish them." It is to be lamented, that motives of etiquette and a dread of injuring successors should have prevented so many able scholars who filled Camden's chair, from committing their lucubrations to the press. The late professor of ancient history, Dr. Cardwell, by a series of discourses on the coins of the Greeks and Romans, a work rich with the stores of ancient and modern learning, has broken through this perverse silence, and set an example, which cannot be too speedily or generally imitated. That day would be a memorable one in university annals, and deserving to be marked with white chalk, which should usher to the notice of the literary world, modern history philosophically taught by professor Smyth, at Cambridge, and ancient history illustrated by Scott at Oxford.*

In 1776, Mr. Scott withdrew from the arduous duties of tutor, and devoted himself to those professional studies which were happily blended with the inquiries of the professor. He prolonged his residence at the University for three years, and took an active part in all that concerned its welfare. To his exertions the Bodleian library owes much of its present prosperity. The fund for the purchase of works was at that period so scanty as to be altogether inadequate to procure the foreign journals, much less to increase its treasures at the public sales of libraries here or abroad. At his suggestion an additional fund was created by the imposition of a small annual payment on all who are entitled to claim the use of the library, and a trifling fee at matriculation. To create a purse for the purchase of the rarities of the Pinelli and Crevenna sales, a large sum was raised by way of loan not bearing interest, but charged on and finally repaid out of the newly

* The author could not refrain from leaving this paragraph as originally written, for an adventitious value has been stamped upon it. By an accidental perusal of these remarks Professor Smyth was happily determined to publish that series of lectures, which have enriched and ennobled our historical literature.

created funds. Mr. Scott freely contributed a large portion of his academical income to this laudable object. There is still extant, and likely to illustrate a new edition of Wood's Athenæ Oxonienses, a very elaborate paper drawn up by him, explanatory of the scheme, and earnestly recommending its adoption.

In these pursuits, fostering and fostered by literature, he passed the whole of his youth, and the early prime of manhood. Surrounded by admiring and intellectual friends — who but must revere the memories of Warton, Wetherall, Lawrence, Blackstone, Vansittart? the idol of his college, in the midst of libraries and gardens, in which he could enjoy a refined leisure now and then caught from the study, the class, and lecture room; domesticated in those quiet luxuries which men of literary habits and tastes appreciate so highly, the ride to Abingdon, the walk in Christ Church meadow, the stroll in Magdalen walks, the society of the common-room, — we cannot wonder that he should recur to these days with fond remembrance; and, happy as his subsequent life was, singularly happy, that he should deem this the happiest portion of it — that in his eye, from the associations which it called forth, an old Oxford calendar should be as a volume of poetry. There, to apply the words of Bishop Lowth, he spent eighteen years "in a well-regulated course of discipline and study, in the society of scholars and gentlemen, where emulation without envy, and rivalry without animosity, awakened activity and kindled genius. There he made many friendships, and left many regrets." Even in a pecuniary sense his time there had been most profitably spent. There were golden leaves among the laurel with which his alma mater crowned the brows of her son.

"Aureus et foliis et lento vimine ramus."

The proceeds of his fellowship, with his receipts from private pupils, which increased yearly for twelve years, his emoluments as public tutor and professional stipend, endowed him with a liberal competence, the first fruits of which he cheerfully bestowed on his then unfortunate brother. The "lost young man," as Mr. Scott termed him, flushed with an early

triumph, had eloped with Miss Surtees, the daughter of a banker of his native town, and wended his way back to Oxford with tardy penitence to solicit shelter for himself and bride. His brother established the returned prodigal in a small house near Oxford, with an injunction that he should read hard for the law, and relinquish the design which he had originally entertained of studying for deacon's orders. Such was the lucky chance by which Gretna became the first stage to the peerage!

A glance at his sources of revenue will at once show how easily the elder brother could afford to be generous. The fellowships at University College are now worth between two and three hundred pounds a year. The senior tutorship, which Mr. Scott for some time held, is in these days worth somewhere about five hundred pounds a year. His private pupils must have realised considerably more. Of these two last sources of income he was, in the latter part of his college career, rendered independent. By the death of his father in the autumn of 1776, he eventually inherited a fortune in real and personal estate of about 9,000*l.* Mr. Surtees has clearly proved that the amount of the property had been unintentionally exaggerated, and that after paying the legacies of 3,000*l.* each to his brothers Henry and John, 1,500*l.* to his two sisters, and 100*l.* a year to the widow, there could not have remained a larger surplus, though Mr. Surtees cannot state the precise amount.

Some interesting letters have been preserved by that gentleman, replete with characters of forethought and thrift, and proving the steadiness with which Mr. Scott blended the care of family interests with the studies of law and literature.

In a letter addressed to his brother Henry, and dated "London, May 16. 1777," he says: "I have got rooms in the Temple (No. 3. King's Bench Walk), and keep Term, with a view of being called to the Bar as soon as possible, which will be in about two years. My poor father's reserve has thrown me very backward in life, but I hope to regain my time by unremitting industry. I shall go down to Oxford in a few days, and shall spend a fortnight or three weeks there." In another letter written the same year, and with a

post-mark of the 6th of August, he says: "I have laid aside all thoughts of coming down to Newcastle for this year, having devoted this summer to solitude and study at Oxford. Indeed, I have some business upon my hands which I am very much intent upon finishing this season, and therefore shall not make any distant excursion. The University is very empty; I have had my friend Johnson staying with me for a fortnight."

In another letter, written from Oxford, September 7. 1777, to his brother Henry, the prudent first-born writes: "I lament that the necessity of your affairs has forced you into the house which you at present occupy. Do me the justice to believe that I never take the liberty of offering my opinion upon any part of your conduct from the mere desire of dictating to you, or from any motive but of sincere affection. I heartily wish you success in life, and therefore am concerned at any event that appears likely to obstruct it. Your house is large, and therefore likely to attract company, both of the visiting kind, and those who will make some stay with you. Excuse me if I observe to you that you will do well to be upon your guard against the effect of this circumstance, and to oppose the consideration of a growing family, and the necessity of increasing your fortune, to the indulgence of present hospitality and elegance. Remember that we all of us owe our present establishment in life to a conduct founded upon industry and frugality — upon unremitting attention to business, and seclusion from company. We inherit from our deceased father not only a provision, but what is more, an example! I observe what you said about my sister Jen. The two great points to be looked to are character and circumstances, for I should be very sorry if she married a man whose character disgraced her, or whose circumstances entailed distress upon her. I certainly could interfere in no way but that of advice, because she is perfectly mistress of herself. As to family, it would be the most absurd thing in the world for us to have any objections on that score. I don't know Mr. ——, but can his circumstances be quite adequate to a plan of settling in life? He is not Mr. ——'s only son, nor eldest son, and can hardly have had time to acquire for himself. I think

these are proper considerations, dictated by a due regard to my sister's happiness; and that is the only ground on which I propose them."

The following letters are not more curious for their political allusions and homely diction, so strangely dissimilar from his elaborate published style, than for those lessons of saving, which proved both brothers to be apt disciples of the school of Dr. Syntax:—

"I think of number one 'tis true,
And then I think of number two."

"You could not be more deeply concerned for the fate of the gallant Burgoyne than were your two brothers and your sister. We mingled our tears for two days together, being English folks of the old stamp, and retaining, in spite of modern patriotism, some affection and reverence for the name of Old England. All people here, whose hearts lie in the same direction, are extremely concerned. It is totally unknown even to themselves what the ministry will do; I think they want common sense and common spirit, as much as the minority wants common honesty.

"The political world is in great fluctuation, but I do not apprehend from anything that I can hear, that Lord Chatham is likely to occupy the place you mention, or that his friends will obtain any places at all. The king is reported to be very determined about the war, and consequently about employing none but such as are inclined to support it. Lord Cornwallis has brought over no news relative to a pacification or a conquest, one of which is the only event that can give an Englishman pleasure. An inquiry will be made soon in Parliament about the miscarriage of Burgoyne, which will terminate in his disgrace or that of Lord G. Germaine, whom the ministry are inclined to support in preference. . . . .

"There is a strong report that Lord Chatham will come in, but it continues all dark and gloomy. Why they delay a declaration of war I do not know; it seems to be no manner of doubt that a war will and must take place. For my own part, I am sick of politics: there is so much folly on the part of ministers, and so much villany on the other side, under the cloak of patriotism, that an honest man has nothing to do but

to lament the fate of his country, and butter his own bread as well as he can, and I hope you take care to do so."

On the 23d of June, 1779, Mr. Scott took the degree of D. C. L. and went out (in university phrase) grand compounder, a term of large sound in the ears of those who are not academics, but which imports merely that the graduate is fortunate enough to be worth 300*l.* a year, and able in consequence to pay higher fees. Having achieved independence, he began to aspire to higher distinctions and prouder honours than Oxford with all her literary chaplets could bestow. He had not in the first years of his college life formed any definite intention of cultivating the civil law as a profession: he had entered his name in the books of the Middle Temple, but his historical inquiries had rendered him familiar with its study, and the advantages which the then forlorn state of Doctors' Commons presented to a young man of intelligence and enterprise were too great to be resisted by the attractions of a college life. Accordingly on taking his degree as D. C. L. he enrolled himself a member of the College of Doctors of Law "exercent in the ecclesiastical and admiralty courts."

When the Archbishop issues his fiat for the admission of an advocate, there is always a proviso added to the rescript that he shall not practise for one year, which is usually called his year of silence. This period was divided by Scott between Oxford and London, with the intention of weaning himself, by degrees, from his scholastic life, but not of abandoning its pleasures; for, in assuming the lawyer's functions, he was determined not to relinquish the privileges of the scholar. He would often, in future years (to use his own phrase), give his clients the slip by the back-door, and steal away to his beloved Oxford. Neither the rivalry of his principal competitors, Doctors Battine and Harris, nor the acquirements of the Courts over which Dr. Calvert, Sir W. Wynne, and Sir James Marriott, the Norbury of his day, presided, required, on his part, very severe or anxious preparation. Never, says Mr. Surtees, pointedly, did advocate enter his profession with greater advantages than Dr. Scott. Intimately acquainted with the language in which the civil law was originally written, and familiarly conversant with the history of the ages in which it

grew, he must have derived from his long residence at Oxford an insight into the questions involving the rights and interests, the difficulties and dangers, of the Church of England in his own day, not less minute than the information would be comprehensive which, as professor of ancient history, he acquired respecting the Catholic Church of earlier times.

In the shipping affairs of his profession he must at the commencement have possessed such a practical knowledge as was probably never before attained by an advocate in the courts which he frequented. He had been born and bred in a sea-port town; his father had been actively engaged in its shipping interests; and after his father's death, considering it unadvisable to wind up these concerns immediately, he for a short period himself carried them on, principally it would seem through the agency of his brother Henry.

A privateering speculation, in which his brother had an interest, early directed Dr. Scott's attention to the laws that regulated these adventurous enterprises.

Such combined advantages rapidly produced great results, as naturally as cause and effect.

In the very first year after his noviciate had expired, the lucky civilian writes to complain — no common topic of complaint with a barrister in his second year at the common law bar — of too much professional occupation. "I believe our rulers would be very glad of a peace; but it is not to be had without a general peace, which I sincerely wish for, though my own interest will suffer considerably by it. I am exceedingly oppressed with business, and shall remain so for these three weeks, and then hope to have something of a vacation." John Scott, in a letter dated the 9th of January, 1783, gives equally conclusive evidence of his brother's success. "The Doctor," he here observes, "has got a daughter; he is also very happy in a sinecure place which the Archbishop of Canterbury has given him, and which is considerably above four hundred a year for life. His success is wonderful, and he has been fortunate beyond example." And then adverting to himself, the future chancellor despondingly adds: "As to your humble servant, I have the younger brother's portion, a life of drudgery; our part of the profession has no places

for young men, and it will wear me out before I cease to be such."

There must have been a strange dearth of able competitors, for Dr. Scott's noviciate was in one respect ill-calculated to command success. From a diffidence of his own powers, or a fastidiousness in polishing his periods, he adopted, on making his debût in the little court of Doctors' Commons, the ungraceful plan of writing out his speeches, and reading them from a paper before him. Those professionally opposed to him objected to this innovation in their routine; but he persisted for some months as he had begun, till he had acquired greater confidence, or more of accuracy and elegance. Neither would he surrender to their prejudices his passion for classical studies and elegant literature.

The lawyer's farewell to the Muse of Blackstone — the lament of Pope, "How sweet an Ovid, Murray, was thy boast," — the prejudices of the Benchers, who could tolerate no poetry but the chorus in Burn's Justice, encouraged, for a long time, the superstitious notion, which it would have appeared too paradoxical to question, that law must be divorced from literature. This heretical tenet is, at length, almost exploded, and lingers only in a few nooks and corners of Westminster Hall. A Vinerian Professor has ventured on a continuation of Dryden's Hind and Panther. A King's Counsel has favoured this prosaic age with a play equal to that of Elizabeth's, whose very spirit it appears to have imbibed. A learned Serjeant has proved in a drama, worthy of its classical model, that the richest imagination and deepest feeling are not alien from a successful and daily practice in the Courts. A quondam editor of our earliest great Review has been elevated, with the entire approbation of the profession, to the Bench; an editor of the Quarterly Review adorns the judgment seat of the Queen's Bench; and, not to dwell on inferior examples, one of the most active and able of our periodical writers has drawn the first prize in the law's wheel, and has rested, though not reposed, on the woolsack. It must be confessed that these are all modern examples, and still regarded as instances of lucky rashness by the more staid practitioners of statute and common law. In the retired walks

of the civil law, however, even at the more exacting era we are treating of, total abstinence from classical or polite literature was not demanded, nor indeed could it be. The advocates must be university men. Many of the books they are in the habit of consulting and citing are written in the Latin, French, or Italian languages. Their arguments are addressed to the persuasion of brother scholars, instead of illiterate jurymen—are built on principles rather than multitudinous cases; and often invite from the old authors illustrations and images, which would be impertinent and pedantic if uttered in the King's Bench. Nor must it be forgotten that the civilians, in comparison with their less fortunate brethren of the Chancery and common law bar, enjoy comparative retirement, and abundant leisure,—may turn aside, on many a vacation day, from the dusty high road to the cool shade and fresh turf, unquestioned, and drink freely at the old classic fountains—a privilege which Dr. Scott did not scruple to exercise.

Of the eagerness with which he sought the sealed well, and his delight in sprinkling its freshness over the aridities of the profession, the following letter written by him to his friend Warton several years subsequently, when he was in full business, affords a memorable instance. Warton had succeeded him in the Camden Professorship, and was at that time preparing for the press his second edition of Milton's minor poems. "We have been more fortunate than we expected, having recovered the original depositions in the cause of Mrs. Milton versus her daughters, which, though not long, contain some very curious and interesting matter, being some of the conversations of the poet sitting at his dinner *in the kitchen* over a savoury dish, which he much liked, and in a merry mood, as the depositions express it. I will get them transcribed for you, though I could almost wish that you could spare a day to come to town to inspect the original signed in the proper hand-writing of Charles Milton, his brother, and his own maid servants, Mary Fisher and Betty Fisher, with whom he discourses. The will was contested, and the cause was proceeded in to a regular sentence, which was given against the will, and the widow ordered to take administration

instead of probate. It was a very illustrious case, for it was concerning the will of Milton, whose style of private life is very much illustrated by it. It was tried by that eminent person, Sir Lionel Jenkins, Judge of the Prerogative Court, and Secretary of State. The principal witness was Charles Milton, afterwards one of James the Second's Judges of Common Pleas, and the depositions are in part taken before Dr. Trumbull, afterwards Sir William, Secretary of State, and the celebrated friend of Pope. If you can't spare a day to come to town, I will have copies made out, and sent to you. W. SCOTT."

Another letter to Warton, a few years later, shows how much literature and politics were allowed to encroach upon his time. "Poor Reynold's death occasions a terrible void among us. We have had no society worth naming since his death. Palmeria comes off nobly in point of provision, 40,000*l.* at least; gentlemen begin to grow more sensible of her merit. Lord Inchiquin is most talked of as the fortunate man. P. S. Just going to sit up all night about the Slave Trade."

To the literary circle of which Sir Joshua Reynolds was a distinguished ornament, Dr. Scott hastened on his arrival in London, and the "novus hospes," from his reputation not merely as a scholar, but as a "clubable" man, met with a most cordial welcome. From his first coming to London (like Lord Mansfield) "he drank champagne" with the wits. In December 1778, he was elected, in company with Sir Joseph Bankes, Windham, and Lord Spencer, a member of the Literary Club. The value of this distinction to a young man may be appreciated from the following extract of a letter addressed by Sir William Jones to the Bishop of St. Asaph, congratulating him on similar success in the following year. "I am sorry to add, that Lord Camden and the Bishop of Chester (Porteus) were rejected. When chancellors and bishops honour us with offering to dine with us at a tavern, it seems very extraordinary that we should ever reject such an offer; but there is no reasoning on the caprices of men. Of our club I will only say, that there is no branch of human knowledge on which some of our members are not capable of giving information." The bishop of St. Asaph acknowledged

his election with more than the usual warmth of courtesy. "I believe Mr. Fox will allow me to say that the honour of being elected into the Turk's Head Club is not inferior to that of being the representative of Westminster or Surrey."

With most of the choice spirits, which met there once a week, Dr. Scott was soon united by close bonds of affectionate intimacy. Not even the irritation of adverse politics could sever Burke from his Sunday parties. Windham, though coquetting for the representation of Oxford, forbore to press his hopes and wishes against him; and Reynolds, by his will, bequeathed for his acceptance, together with a legacy of 200*l.*, any one of his paintings he might select as a token of esteem. His friendship with the coryphæus of the club, Dr. Johnson, was still more close, and of an older date. The learned lexicographer had been introduced to Scott by Chambers at his rooms in University; and on his departure for India his young friend seemed to succeed to his place in the worthy man's regard. This was especially evinced when Chambers, then a judge, paid a farewell visit, in company with Johnson, to his friends at Newcastle. Scott escorted him from that town to Edinburgh, displaying on the journey that intelligent courtesy, and those little obliging attentions, which grace the young, and which old age delights in. "With such propitious convoys," says the complimentary Boswell, "did he proceed to my native city. Mr. Scott's amiable manners and attachment to our Socrates at once united me to him. He told me that, before I came in, the doctor had, unluckily, had a bad specimen of Scottish cleanliness. He then drank no fermented liquor. He asked to have his lemonade made sweeter, on which the waiter, with his greasy fingers, lifted a lump of sugar, and put it into it. The doctor, in indignation, threw it out of the window."

Many years afterwards Lord Stowell gave a description of this scene to Mr. Croker, in his peculiarly happy manner. "The house," he said "was kept by a woman, and she was called 'Luckie,' which, it seems, is synonymous to Goodie, in England. I, at first, thought the appellation very inappropriate, and that unlucky would have been better, for Dr. Johnson had a mind to have thrown the waiter, as well as the

lemonade, out of the window." Mr. Scott must himself have stood in awe of the choleric Mentor; for he had treated him on the road as a petted schoolboy scarcely yet emancipated from the birch, muttering, when he ventured to complain of a head-ache in the post-chaise, "At your age, Sir, I had no head-ache!" He stayed in the Scottish capital three or four days, but does not appear to have been impressed with much reverence for the faithful host. Being asked by Mr. Croker in what estimation that garrulous personage was held among his countrymen; "Generally liked as a good-natured jolly fellow," replied his lordship. "But was he respected?" "Why, he had, I think, about the portion of respect that you might guess would be shown to a jolly fellow."

In his delightful collection of Johnsonian gossip, which owes so large a portion of its excellence to the very defects of the narrator, we are presented with several interesting views of the Oxford scholar; just sufficient to enhance our regret at the singular fatality which has attended his own memorials. He had suggested a new edition of Boswell, and had dictated some notes of his recollections of Dr. Johnson, regretting that the application came so late, and the ana which he communicated were sent by post to Sir Walter Scott, at Edinburgh, for his perusal. The post-office bag containing this packet and several others was lost, and has never been recovered. But for this unusual accident what light would there not have been thrown on such passages as the following, which require an interpreter; and the application of which is now dimly guessed at!

We have adopted Mr. Croker's version as the correct one: — "We dined together with Mr. Scott, at his chambers in the Temple; nobody else there. The company being small, Dr. Johnson was not in such good spirits as he had been the preceding day: and, for a considerable time, little was said. Doctor Johnson observed that Charles Fox did not talk much at our club. Scott quoted the saying of a Greek poet, that Fox might be considered as the reverse of Phœax, of whom (as Plutarch relates in the life of Alcibiades) Eupolis the tragedian said, It is true he can talk, and yet he is no speaker."

With his friend Dr. Johnson, we are informed by Boswell, he walked over the smouldering ruins of Newgate, after the riots of 1780. Dr. Scott's impression of these calamities and fanatical fires is vividly portrayed in the following letter to his brother Mr. Henry Scott: —

"DEAR BROTHER,— I received your letter this evening, and am happy in being able to assure you that peace and satisfaction are fully re-established among us. We are employed at present in securing the agents in this infernal business, and in taking every method of prevention against any future attempts. Military Associations are formed in every part of the town, and I hope to be a very tolerable performer of the manual exercise by the next time you see me. In short, the spirit of every man either of property or of education, is so thoroughly raised, that if these scoundrels (be they sanctified villains, or be they down-right Newgate ruffians) were to attempt any thing again, we should be able, I am persuaded, with hardly any assistance from the military, to drive them, where they ought to go, that is, to the devil! What you have heard of the Northumberland militia is strictly true. In no part of the town did the troops behave with better-regulated impetuosity. The execution they did was very considerable, and yet so necessary that it has not subjected them to the least imputation of inhumanity.

"The trials of the rioters will come on next week. Till then the public remains in ignorance, whether these dreadful scenes exhibited here were the effect of any regular conspiracy, or only the sudden eruption of that ill-humour, which has been brooding in the minds of the common people for some time past, and has been but too successfully inflamed by the artifices of a malignant party. What the specific charges are against Lord George Gordon we do not know, nor by what evidence they are to be supported; he is a close prisoner, and will continue so till his trial.

"The papers now have given you a complete enumeration of particulars, for they have resumed courage enough to speak out, which they durst not do during the continuances of the outrages. My brother's family and myself had our full share of the alarm, Lincoln's Inn and the Commons being both marked out for destruction, as being the residence of lawyers. I removed every thing that I could upon so short a notice, expecting every minute to have my house fired about my ears. John did the same, removing what he could carry, with his wife and child, in the middle of the night to a place of greater security. The terrors they were in are not to be described; they were, however, no more than what were felt by

every decent virtuous family in town. Nobody was safe, but he that was protected by his poverty, and his participation of guilt. I am certain that, if the riot had not been suppressed that day, the next night would have seen the whole city in flames.

"The hospitals are full of wounded men and women, and the number of persons killed by the military and by intoxication is considerable. I believe not more than one soldier was hurt. The city behaved with the most disgraceful want of spirit. Jack Wilks was the only magistrate who showed any degree of courage or sense upon the occasion; if government make a right use of this business, they may derive benefit from it. People's minds are heartily sickened of licentious notions, now that we have had such melancholy experience of their consequences; and the public in general is returning to a love of regular government and of the old constitution under which we have lived happily for so many years. I wish the opposition may not act an improper part at the meeting of Parliament next week. This is too serious a business to be made party contention.

"The Tower guns have been firing very briskly, and the report is that it is on account of Charles' Town and of the American army in it. I am with best affections,

"Yours, W. S.

"Lend me some money when you can."

To return to Boswell's record of Dr. Scott's intimacy with Dr. Johnson: "On Sunday, April 15, 1781, Easter day, after solemn worship at St. Paul's, Dr. Scott came in. He talked of its having been said that Addison wrote some of the best papers in the Spectator when warm with wine. Dr. J. did not seem willing to admit this. We talked of the difference between the mode of education at Oxford and that in those colleges where instruction is chiefly conveyed by lectures. J. Lectures were more useful; but now, when all can read, and books are so numerous, lectures are unnecessary. If your attention fails, and you miss a part of the lecture, you cannot go back as you do upon a book. Dr. S. agreed with him. 'But yet,' said I, 'Dr. S., you yourself gave lectures at Oxford.' He smiled. 'You laughed then,' said I, 'at those who came to you.'"

It would have been pleasant to have read Lord Stowell's comment on the want of tact which Boswell exhibited in his attempt at smartness on the unfortunate smile. He might

surely have known that it was merely a courteous denial of the inference, or an apology for not discussing it. When Lord North was accused by a county member of having broken his word, because he had smiled and pressed his hand in answer to a request, the facetious Premier good-humouredly informed the rural novice at ministerial levees, that, if ever he should hazard another petition and be so answered, the minister's smile was a refusal. We may be sure that Mr. Scott must often have had recourse to similar arts of diplomacy to have maintained a friendship unbroken by a single quarrel with the dictator of literature. Though prevented by other ties from being his frequent companion in latter years, he preserved the regard of the venerable old man to his death, and was named by his will an executor in conjunction with Sir Joshua Reynolds and Sir John Hawkins. He bequeathed to him, with a singular felicity of choice, consulting at once his professional studies and classical taste, the Dictionnaire de Commerce, and Lectius's Edition of the Greek Poets.

His duties as executor involved Dr. Scott in a curious controversy. A brother executor, Sir Joshua Reynolds, had, without his knowledge or sanction, written to Dr. Parr, to request that he would write Johnson's epitaph in Latin. The coy vanity of that erudite scholar had at length, after much secret negotiation, consented to undertake the task. A sum of 1000 guineas had been subscribed for the monument, and a committee of subscribers was formed from the élite of the Literary Club, under the name of curators, to peruse the proposed inscription. To their consternation, the learned Vicar of Hatton declared peremptorily that he would not grant them a single peep at his lapidary performance. Was he — a giant among pigmies in the classical world — the Great Cam, or rather, now that Johnson had disappeared, the Ursa Major of literature — to submit his composition to the cavilling criticism of every puny Zoilus? He would not allow one line to be read till graven on the tablet, and affixed to the walls of Westminster Abbey. The general dismay at this intelligence was increased by a secret rumour that his niggard praise would only bestow the epithet "pro-

babilis" on the author of the "Vanity of Human Wishes." With many of that great man's followers, friendship bordered closely on idolatry, and Dr. Scott was called upon to mediate between the two belligerent parties. This negotiation he conducted with considerable tact, addressing to his friend, Malone the following letter, which is interesting in itself, and highly characteristic of the writer: —

"April 12. 1795.

"Dear Sir,—I was in hopes that your conversation with Dr. Parr would have removed the difficulty which stood in the way of a reception of his epitaph. I regret that it has not. As the matter now stands, I can have no objection to obeying your call upon me in the particular character of Dr. Johnson's surviving executor. I was ignorant that Sir J. Reynolds had applied to Dr. Parr in the name of the executors to write an epitaph. I should certainly have concurred in it very sincerely, thinking as I do that Dr. Parr was a most proper person to be applied to upon the occasion; but I must add, that I should have concurred in it upon the certain expectation that the Doctor would have been entirely disposed to communicate the inscription to us before it was fixed upon the marble—certainly not for the purpose of being subjected to hostile and captious criticism, and still less for that of the writer's receiving from us the law with respect to the style and manner in which it ought to have been written; but merely for the purpose of its being considered by us in conjunction with him, how far it substantially answered the common ideas under which we solicited him, and he engaged to write it. It never would have occurred to me as a departure from that respect which prompted the application to Dr. Parr, to have expected that we should have had the opportunity, I will not absolutely say of approving the inscription, for that might be deemed too strong a word, but of giving it the concurrence of our opinion with his. As executors, we were perhaps the persons who were, in the first instance at least, responsible for its general propriety; and I can by no means think it a sufficient discharge of the duties of that responsibility for us to have conceived our discretion to be limited to the mere choice of a gentleman to write it, and to be absolutely excluded from every thing else relating to it. Dr. Parr will not, I am sure, think that I mean to put either an injurious or an extravagant supposition, when I merely suppose the possibility that in any man's composition, however accurately formed, there may be an expression or a sentiment, which to other

judgments equally interested in the same subject, may appear to require a little reconsideration on the part of the writer; or which may at least be the subject of our amicable discussion with him, whether it were not fit that it should be so considered before it is irrevocably fixed. Independently of all this, there is another consideration which weighs powerfully with me. It would have been incumbent upon us to have applied to the Dean and Chapter for leave to put up the inscription, which, of course, must be submitted to them; for, by undoubted law and practice, the right entirely resides with them of deciding what inscriptions are to be put up within their church; and I can by no means think that we should have gone to the Dean and Chapter upon a becoming errand, as the bearers of an application in favour of an inscription which none of us had ever seen, and consequently could not have had an opportunity of approving. The committee, chosen, as I recollect, by the majority of the subscribers, who appeared at a public meeting, eased the executors of the business. They were not bound by the choice of the executors further than as they adopted it, which they did; and I conceive them to be now standing upon the same footing as the executors did, with the same claims upon Dr. Parr, the same responsibility to the public, and the same obligation with respect to the propriety of the application which they must necessarily make to the Dean and Chapter. Having said this, I must add, that, upon one view of the matter, I can by no means think Dr. Parr's present objection to be destitute of reasonable foundation. The curators are much more numerous than the executors were. Some of us are strangers to Dr. Parr, and he may fairly enough entertain an apprehension that the epitaph may possibly be subjected to a freedom of observation improper to be submitted to on his part. I own I cannot but think that it would be a reasonable accommodation to his feelings to commit the business of considering the epitaph to any three gentlemen of our number — any three of them named by himself — for the purpose of discussing it with him. This mode promises to secure both objects; the proper independence of Dr. Parr on the one hand, and the fair responsibility of the curators on the other. I, for one, shall be disposed to act with entire confidence in the concurrent judgments of those gentlemen with Dr. Parr; and I presume that the other curators will feel the same disposition. It would give me great pleasure to hear that this suggestion was adopted by Dr. Parr, or was modified by himself in some other form more consistent with his own apprehensions and feelings; so that, at any rate, Dr. Johnson's memory may not be

deprived of that honour which the wishes of every friend have been anxious to provide for it. But if this, or something like it, cannot conquer the Doctor's scruples, I fear I must decline joining in an application on behalf of a public inscription, the contents of which have never been seen, and therefore cannot have been adopted by any one gentleman who is to make the application — I am, dear Sir, yours faithfully,

"W. Scott."

This judicious communication, in which courtesy and firmness were happily blended, did not at first produce the desired effect. The persevering Dr. Parr launched two ponderous epistles at the refractory King's Advocate, suggesting querulously that he and Bishop Horsley should write the inscription, murmuring at his being scared by the objections of reverend and right reverend hypercritics, and regretting that one for whom he professed the highest respect that could be due to learning, taste, and genius, should take up arms with dilettanti scholars against him. A compromise was at length effected; whether fortunately or not there may be reason to doubt. We, at least, should have preferred to the cold classicality of a dead language an epitaph in English on the great master of English composition, which might have set forth his merits in other than Roman fashion, and which all his admirers could have read. Be this as it may, however, it is amusing to contrast the fierce advances of the Whiggish divine with the shrinking Toryism of the civilian, and the feat of agility with which he escapes from further correspondence through the intervention of a convenient friend. His reply runs thus: —

"April 30, 1795.

"My dear Sir, — Don't think me guilty either of affectation or of disrespect to you, when I tell you, that the term being come in, attended with an uncommon load of business, both professional and official, I really am not able to reply to your obliging letters otherwise than by thanking you for them, and by saying that I have transferred to our common friend, Mr. Malone, the pleasure of answering them according to his own judgment; in which, having entire confidence, I shall be thoroughly disposed to concur. You will, I am sure, thank me for the choice of correspondent; and I

beg you to believe me to be, with real respect, your very humble servant,

"W. SCOTT."

This letter, it will be perceived, alludes to his uncommon load of business, both professional and official,—a burden which had been increasing from the day that he began to practise, and whose weight he could cheerfully bear. From the first the lawyer's heart had been gladdened with thick briefs and heavy fees. The novelty of a reporter had not yet startled the sombre courts, in which he soon occupied the most conspicuous place, from their obscure propriety; and we are indebted to tradition for the information that he was an elegant pleader, and the neatest possible stater of a case. But there wanted no other reporter than the Gazette to apprise the public how firmly his foot was planted on the scaling-ladder of promotion. In 1783 he was appointed Register of the Court of Faculties, "*a not unemolumentary*" place. In 1788 he was selected by the Bishop of London to be the Judge of the Consistory Court. In the same year he was advanced to the lucrative office of Advocate-General, and knighted. The pecuniary value of this appointment may be estimated by the fact that he netted (in mercantile phrase) by several of the prizes, of which our cruisers at the commencement of the last war with France swept the seas, upwards of 1000*l.* each. In 1790, on the death of Dr. Halifax, Bishop of St. Asaph, he was chosen to the situation of Master of the Faculties, and, as a crowning honour, was in 1798 created Judge of the High Court of Admiralty.

It is a singular coincidence that his brother should have kept abreast of him, and advanced, almost "pari passu" in this rapid career. They were knighted on attaining official rank within two months of each other; the Advocate-General, Sir William Scott, and the Solicitor-General, Sir John Scott, repaired for the first time to the same levee; in the same year they both took their seats at the board as Privy Councillors, and the wax had scarcely hardened on the appointment of the Admiralty Judge, before a fresh seal was required for the patent of John Lord Eldon, Chief Justice of

the Common Pleas. Such a close race between such near kinsmen, is, we believe, unparalleled, and was sportively alluded to by his late Majesty George III. Being in at the death of a stag, which had given the field a very bad run, while a stag of the same herd had afforded excellent sport the day before, "Ah!" exclaimed the king, "there are not often two Scotts to be found in the same family."

But, though equally fortunate and equally meritorious, they had trodden the steep ascent to fame by different tracts, the one selecting a rough, and the other a flowery path. As if determined to atone for one rash step by constant abstinence and rigid self-denial, the future chancellor had refused to join in the social meetings at the Commons; and when he had once sported oak, to use the college phrase, could not be tempted forth by any persuasion. "I dine with Coke to-day," was his pithy answer to the friendly solicitations of his relative that he would give Johnson and his fellows the meeting. So complete was his seclusion, (and those who know the convivial temperament of Lord Eldon will give him credit for his forbearance,) that the gossiping Boswell does not appear to have once encountered him in society, or to have been aware of his existence. He thought with Sir William Jones, and perhaps not unwisely at that time, that in his branch of the profession the reputation of literature, or even a literary craving, hung as a dead weight round the neck of the determined lawyer. He flung the incumbrance from him, and did continue, by however short an interval, to outstrip his elder brother.

To complete his prosperity, Dr. Scott had married, on the 7th of April, 1781, Anna Maria, eldest daughter and coheiress of John Bagnall, Esq., of Early Court, Berks, at whose death he came into possession of the family residence near Reading. By his marriage he formed a connexion with the Portsmouth family, but his own exertions had ere this superseded the necessity of looking up to the great for patronage. His professional eminence rendered him naturally ambitious of a seat in Parliament. As early as 1780, on the death of Sir Roger Newdigate, he had aspired to represent the University, and attain that eligible trust which Windham

and Canning sighed for in vain. The fortunate candidate is precluded by etiquette from the toil and taint of personal canvass; and, when once elected, need entertain no dread of fickle constituents or a sudden dissolution, being certain of his re-election quamdiu se bene gesserit. The young civilian met with a formidable rival in Mr. Jones, who, though bent on a judicial voyage to the East, declared that for this object he would cheerfully sacrifice not only an Indian judgeship of 6,000*l.* a-year, but a nabobship of as many millions. One paragraph in his letter deserves to be cited for the edification of dilettanti lawyers. "The hurry of the general election to a professional man has obliged me to suspend till another long vacation two little works; one on the Maritime Jurisprudence of the Athenians, and the second A Dissertation on the Manners of the Arabians before the time of Mahomet." With these abstruse inquiries, however, he had interleaved liberal politics too frequently to stand a successful competition, and he resigned in favour of Dr. Scott, for whose extensive erudition and fine taste he professed unfeigned admiration. Even he, popular as he was, found himself compelled to yield in turn to the more established claims of Sir William Dolben, — a result which Dr. Johnson had from the first foreseen. "Did I tell you," he writes to Mrs. Thrale, "that Scott and Jones both offer themselves? They are struggling hard for what others think neither of them will obtain." The members of convocation have always evinced a partiality in the abstract to a country gentleman above a lawyer, and for the elder to the younger man. Though fortunate enough "idem sentire de republicâ," he was advised to defer his pretensions to the worthy baronet, and on the first vacancy, which did not happen for twenty years (such a life-tenure is the seat) was unanimously elected. Meanwhile, in 1784, he was complimented with the representation of Downton, but was, on a scrutiny, unseated. Being far from an ardent lover of politics, and not anxious to desert his lawful wife, the profession, he withdrew from all further effort till the general election in 1790, when, by the influence of ministers with the Earl of Radnor, he was again returned to Parliament for Downton, a close borough, affording that convenient

avenue by which almost every lawyer of distinction has been first introduced to the House. He had now attained his forty-sixth year, a period of life too mature for a coy and gentle scholar to become a bold and frequent speaker. Grattan said of Flood, when brought into parliament at a still later age, that the oak of the forest was too old to be transplanted at sixty: and if we may be allowed to pursue the metaphor, we should say that the garden plant had been nurtured too long by the still waters of the Isis to throw out its arms with vigour on the more exposed banks of the Thames.

During the first six years after his return, he only spoke once, June the 2d, 1795, and then on compulsion, Mr. Dundas having alluded distinctly to him as the sound legal authority on whose advice ministers had acted in their instructions to Sir Charles Grey and Sir John Jervis. A motion of censure was made on the proclamations of these officers in the West Indies, and he could not but advance to the rescue. He felt that he had stepped into the arena of a popular assembly too late for an active combatant, and suffered much from constitutional shyness. According to his own frank confession, "it was always with great reluctance, and not unfrequently with some degree of personal pain, that he obtruded himself on the notice of the House." He had his peculiar seat, and loved to address the Speaker at stated periods, — the interlunar periods, if we may so express it, of debate; on going into committee, or on proceeding with the order of the day for resuming an adjourned debate, or when the third reading of some obnoxious bill was moved (he loved, with characteristic caution, to wait till the third reading); — those times, in short, when he could, without risking himself, deliver a well-weighed and nicely-poised oration to a select and attentive audience. His official character came in aid of this natural reserve, and none could dispute the propriety of the judge abstaining from all party questions.

In a long parliamentary life of thirty-two years he never but once broke this guarded silence, when, at the request of friends, and in accordance with his own sense of equity, he rose in defence of a proposed grant to the Duke of Cumber-

land. But though the rule "de pedibus ire in sententiam" was always most agreeable to his feelings, and often most consistent with the dignity of his station, he never failed to speak with spirit and effect, when the searching eyes of reformers sought to detect some flaw in his court, or admirals, impatient for the distribution of prize-money and unjustly querulous of the law's delay, inveighed loudly against his administration. On Lord Cochrane's indulging in a violent tirade against, and concluding with a motion of inquiry into, the presumed abuses of his court, Sir William Scott retorted with some asperity on the gallant officer, who seemed to be pursued by an evil genius on land, and to become wrong-headed the moment that he stepped off the quarter-deck. "The noble lord," he said, "was a prompt accuser. He had been an accuser not only of individuals, but an accuser of courts of justice. He had been, however, an unfortunate accuser, and he pledged himself by all the credit which he might have obtained during the many years he had sat in that house, that the noble lord would prove as unfortunate in this accusation as in any preceding one,"—a prediction which was fully verified. He drew on his experience, as Judge of the Admiralty, to introduce some useful measures into parliament for the encouragement of seamen: amongst them, a prize agency bill, a very valuable measure for suppressing frauds in the West Indies. Except, however, in the event of proved and flagrant abuse, Sir William Scott, it must be admitted, was a timid and reluctant reformer. On one occasion, when Lord Folkstone, in moving for a committee to inquire into the state of the inferior ecclesiastical courts, had instanced a case of grievous oppression, in which a poor woman for applying to another an opprobrious epithet,—very frequently bandied among the vulgar, and which it was proved she richly deserved,—had been excommunicated and lain in prison some years; the Judge of the Consistory Court confessed "that his attention had been very long called to the enormity of this punishment; that excommunication was an abuse of a religious ceremony, and that it would not be difficult to find a substitute for it more efficacious, less expensive, less oppressive, and less unseemly.

He promised to bring in a bill for abolishing it, should it be the sense of the House that such a measure was expedient." The promise was hailed with loud cheers from both the ministerial and opposition benches; accordingly, in the next session, he introduced a bill to regulate ecclesiastical courts, remarking, at the same time, that he had discharged the task imposed upon him with great diffidence, and under many circumstances of disadvantage, being well aware of the magnitude and importance of the subject. "If the House should adopt his bill, he should feel much pleasure; but if they disapproved of it, he should take leave of it without regret."

His zealous advocacy of the church, and entire devotion, either in opposing or introducing change, to the interests of the clergy, stands in bold relief to this repugnance against agitating reforms. Both in his character of civilian and as a member for the University of Oxford, he considered that illustrious body to be especially his clients and constituents. He opposed indeed, with all his energies, the bold precedent set by Tooke, of a priest in full orders sitting in the house, from the conviction that such a practice would inevitably tend to secularize and desecrate the profession. The clergy sanctioned his advocacy of their exclusion from the representative body, for they concurred in its propriety; and knew well, that when such men as Scott and Perceval were called up, in the words of the writ of summons, "to consult for the safety and welfare of the church," that church would never want able and intrepid champions. Well may they mourn their loss, though still zealously defended by an Inglis, and escaped from the tender mercies of a Lushington.

For their protection he introduced and carried an Act for amending the 21st of Henry VIII., intituled "Spiritual Persons abridged from having Pluralities of Livings, and from taking of Farms;" and was active in procuring a better legislative provision for stipendiary curates, the foundation of the still more comprehensive act of Lord Harrowby, by which they are rescued from a state of degrading penury. Nor was he less alert in the cause of the beneficed clergy. All attempts, whether on the part of country gentlemen, or

aldermen, or Irish members, to undermine the system of tithes, met with his determined and successful resistance. Curwen's Tithe-law Amendment Bill, Sir William Curtis's London Tithe Bill, the Potatoe Tithe Exemption Bill, all shared at his hand a common fate of rejection. Nay, in maintaining the rights of the church he more than once triumphantly withstood the Chancellor of the Exchequer in his palmiest days of fiscal imposition. When Mr. Vansittart, in 1815, moved the second reading of the Chapel Exemption Bill (by which chapel-property was discharged from payment of rates), Sir William Scott rose to give his decided opposition to the measure. "Sectarians," he urged, "ought not to be exempt from parochial assessment. No man valued the principle of toleration higher than he did; but he understood its acknowledged interpretation to be this: that every man might exercise whatever form of religious belief he pleased; but that he must contribute his legal proportion towards the maintenance of the church established by law."

How intolerant would this definition, which met with no dissent at that period, be deemed now, according to the more enlarged and transcendental notions of the present day! Toleration has extended its borders to the very confines of encouragement to schism, further than Sir William Scott would have dared to tread. He beat the treasury bench on a division by a majority of two to one. With like success, a few years afterwards, he objected to a clause introduced by ministers into the New Church Building Act, which entitled any twelve well-disposed persons to build a church and endow it, without the consent of the patron. So great indeed was the influence which his character and conduct had acquired in that assembly, that it was generally understood his vote could command that of twenty others on a question of importance, and in a full house. His sanction was alone wanting to have ensured the passing into a law of the Adultery Prevention Bill, a measure by which Lord Auckland sought to make adultery the object of severe penal inflictions. The mild and cautious spirit of the Tory judge was startled by some of the clauses, whose spirit resembled too closely some of the Acts of the Commonwealth Parliament to obtain from

him more than a faint degree of favour, and a very qualified support.

At the age of seventy-five, when among the seniors, if not the father of the House, he was selected on the meeting of the new parliament, in 1820, to move Mr. Manners Sutton into the chair; and performed his task with a dignified grace that proved the propriety of the selection. It would have been difficult to decide which of the two, the speaker or his proposer, bore himself more fitly as the representative of that proudest of all characters—an English gentleman. His speech, enumerating the duties which belong to the first commoner of the country, would easily bear away the palm from all precedents of courtier-like compliment. But we should do injustice to his efforts in the House of Commons, if we did not present to the reader some specimens of his manner; of the eloquence of the porch; of his mild, winning, and persuasive oratory. The speech, to which we have already made allusion, deserves, and would repay, the most diligent study: it occupied three hours in the delivery and fills thirty pages in Hansard, and is replete with interest and instruction on those absorbing topics respecting the church, which more than any other subjects of domestic policy agitate the public mind. He throws down the gauntlet in defence of the present distribution of church revenues and ecclesiastical discipline; and we have not yet seen the champion, who, without arraying himself in popular prejudices, has ventured to take it up. He thus apologizes for occasional residence:

"The general alteration which has taken place in the general system of life and manners must be adverted to. The native clergy were single men, living in the habits of a secluded life. They generally fixed themselves near the places of their nativity. I observe in most ancient catalogues of the English clergy, both secular and regular, that their names are usually taken from some neighbouring village or borough to that where you find them settled. From the spot where they settled they had few possible calls: there was little communication between different parts of the country, or with the capital; correspondence was rare, and carried on either by

special messengers, or by the accident of pilgrims passing that way. The gentry themselves, excepting those who attended parliament, ventured little beyond the sod of their own village, unless to the County Court; the business of the county was transacted in the county. All this has undergone a great alteration; the different classes of men are no longer glebæ adscriptitii; communication is opened; much of the business of the kingdom is transacted in this town. The clergy are most generally beneficed in parts of the kingdom remote from the places of their birth and education, and they have calls of family affection and duty to the relations they have quitted. Being invited by the Reformation to marry, they form new family connections, which again produce calls of a similar nature; and I presume no reasonable man would wish that they should be deaf to such calls, and should turn their backs on the happy intercourses of family kindness. It is one of the best effects of the Reformation, that, by introducing them to the charities of domestic life, it has taught them the practical knowledge of the duties which belong to those charities. They have family property in other parts of the country; they are called to the capital for the transaction of family concerns; they are called to attend to the declining health of a wife or a child, by a temporary change of air and situation. I am no advocate for dissipation when I observe they have families of young persons, who are not without their claims to reasonable indulgences for the purposes of health, of education, of improvement, and, I venture to add without fear, even of innocent curiosity and relaxation."

In the same benevolent and philosophical spirit the eloquent member for Oxford University makes a powerful excuse for the present appropriation of the funds of the church:—. "To the mischiefs arising from the extreme poverty of many parochial benefices I have heard it suggested in this house as a cure, that there should be an equalization. Equality is in these days the grand panacea for all disorders. Unfortunately, besides twenty other objections, arising from the general interests of the civil and religious policy of the country, there are two objections that seem to dispose of it

completely: one is, that it could not be effected without a most enormous plunder of the laity; and the other, that, if done, it would not answer the purpose for which it is intended. In the first place, advowsons, though originally perhaps mere trusts, are now become lay-fees. They are bought and sold, and are lay property just as much as any other tenements or hereditaments. And they are not merely lay property in law, but a very large proportion of them is so in fact; for, of the 11,600 livings in this kingdom, 2500 may be in ecclesiastical patronage,—the rest (exclusive of those which belong to the crown amounting to near 1100) either belong to various lay corporations (for even colleges are such) or to lay individuals, who alone possess near 6000 of the whole number. Now, Sir, in this state of things, I desire to ask upon what ground I can be called upon to give up half the living, the advowson of which I have purchased upon a price relative to its value, in order that that moiety may be transferred to improve another living, belonging to another patron, who has paid nothing for that moiety, and who has no other title to it but that he happens to possess the advowson of a smaller living? I see no ground, except such an one as would justify the legislature in taking away half of any other estate I had purchased, in order to give it to my neighbour, because he happened to have less. Let gentlemen consider the effect of such speculations! In the next place, suppose that this was accomplished in a way consistent with the rights of property, what would follow? Equalize all the clergy, and you in effect degrade them all, for it is the grossest of all mistakes that the Church of England is amply endowed. It is demonstrated by a very exact inquirer upon these subjects, Mr. Cone, that, if even all the preferments of every species, belonging to the Church of England, were moulded into one common mass, and thence distributed, if the venerable fabric of the hierarchy was dissolved, (a matter not to be effected without a convulsion and laceration of the civil state of the country, of which no man can foretell the consequences,) and its funds parcelled out amongst the parochial clergy, the maximum of an English benefice would be not more than 167*l.* a year, an income by no means adequate in the present state of the world to the

demands which society makes upon that profession in point of education, of attainments, of manners, of general appearance in life. As the revenues at present are distributed, the clergy, as a profession, find an easy and independent access to every gradation of society, and maintain a fair equality as they ought to do with the other liberal professions; and the elevation of the highest ranks gives something of a dignity to the lowest: alter the mode of distribution and you run the risk of producing a body of clergy resembling only the lower orders of society in their conversation, their manners, and their habits; and it is well if they are not infected by a popular fondness for some or other species of a gross, a factious, and a fanatical religion. In the state of the church I have described, universal residence is out of the question. How can the public demand, under pains and penalties, that there shall be a resident incumbent in each parish, when so large a proportion of the benefices in the kingdom do not pay more than what most of us in this house pay to our upper servants? There are, I suppose, 3000 livings not exceeding 50*l.* a year, and many below it. When I look at the real situation of the clergy, at the distresses and difficulties of a very large proportion of them, — men must be made of sterner stuff than I happen to be composed of, who can say that this matter is to be put upon the footing of a rigid, universal, unbending obligation, to be applied with a mathematical apathy to all cases, without the least consideration to men's families or their fortunes. This too by means of the common informer! Of that personage I shall take care to speak with all due caution, because I perceive that, although he is a very abhorred man, when he is blowing up a conspiracy against the state — not very gracious when he is enforcing a tax, yet that he is received with some degree of kind acceptation when he betakes himself to the employment of privateering on the church; all therefore that I shall venture to say of him is, that it appears to be but a clumsy sort of policy at best to make the avarice of mankind the grand instrument of religious and moral reformation." . . . After this playful sally, the eloquent advocate of the clergy proceeds to defend their agricultural propensities, and embraces the opportunity of pronouncing an

eulogium, not more beautiful than true, upon their order:—"The parish priest is to take care undoubtedly that the ecclesiastic shall not merge in the farmer, but shall continue the presiding and predominating character; but the moderated and subordinate practice of farming supplies many means of cheap subsistence for the clergyman and his family; many means of easy kindness and hospitality to his poorer parishioners; many opportunities of distinguishing the industrious and well-disposed by the favour of employment; and many motives of pleasing attachment to the place which furnishes the healthy and amusing occupation of his vacant hours. Personal debasement must be guarded against: but when I recollect that it has been the opinion of all antiquity that 'agriculturâ libero homine nihil dignius,' and that the practice of modern times reconciles it with the dignity and even the majesty of the most exalted stations, I am not prepared to admit, that personal debasement is a necessary consequence, and in the example of the illustrious Hooker tending his sheep on Barham Downs I think I see that even some of its humble occupations may be performed without degradation. The enforcement of duties should be pursued with as little vexation to its objects as is consistent with its efficacy, without any unnecessary harshness or restraint, still less with disrespect and degradation; with decent attention to the situation of the order in the state, and to the personal convenience of individuals. Their profession is in all countries of most important use to society; and its general utility depends upon its general estimation. In this country it is an eminent order of the state; it has always stood by the state with firmness, and in no times more meritoriously than in the present. The individuals are, in a large proportion of them, men of learned, and, many of them, of elegant education. Literature, both useful and ornamental, has been in no country so largely indebted to its clergy. Many of them are taken from among the best and most respected families of our country, and it is on all accounts, religious, moral, and political, anxiously to be wished that the families of our gentry should continue to supply a large proportion of our clergy. Such men are not the subjects of an overstrained and extreme legislation. Something must be trusted

to their own sense of duty — something allowed to their personal convenience. They are to be governed, it is true, lenibus imperiis, — by an authority efficacious in its results, but mild in its forms, and just in its indulgences. May I add that, whilst we have seen in other countries Christianity suffering in the persons of the oppressed clergy, it imposes a peculiar obligation upon us to treat our own with kindness and respect, and to beware of degrading religion by an apparent degradation of its ministers."

The feeling of attachment to the Church, so vividly portrayed by Sir William Scott in the senate, pervaded his administration of ecclesiastical law on the judgment-seat. As judge of the Consistory Court it fell to his lot occasionally to admonish clergymen when betrayed into error, and visit them with punishment pro salute animæ. By none could reproof be administered more discreetly, or in a kindlier spirit of discerning justice. We may select an instance from Haggard. (The office of the judge promoted by Cox v. Goodlay, 2 Haggard's Cons. Reports, vol. ii. p. 138.) In this case a proceeding was instituted under the statute of Edward the Sixth, by a parishioner against the vicar, for the lawful correction and reformation of his manners and excesses, especially for quarrelling, chiding, and brawling by words in the parish church. The articles further pleaded, that during the sermon Mr. Goodlay was preaching, he did, without any just cause or provocation whatever, and with great warmth and passion, and with a loud voice, address the complainant from the pulpit to the following effect: "Miss Cox, I have observed the most indecent behaviour from you in this church from time to time, and if you cannot behave better, I will order the sexton to turn you out; I have represented you to the Bishop, and will again, and if that will not do, I will put you into the spiritual court." Mr. Goodlay having appeared in person, and given an affirmative issue to the articles, it became the duty of the judge, as representing the Bishop, to recommend greater caution and self-restraint. "The duty," he said, "of maintaining order and decorum in the church lies immediately on the churchwardens, and if they are not present, or being present do not repress any indecency, they desert their

proper duty. The officiating minister has other duties to perform — those of performing divine service. In saying this, I do not mean to say that occasions may not occur in which it may not be justifiable, and even unavoidable, for him to take a part in suppressing any disorder or interruption in the church. It is rather unfortunate when they occur, and, if they do, they ought to be used with the most guarded prudence and gravity. If passion is interposed, it is apt to break out in unseemly expressions, such as may be deemed to have been indulged on the present occasion: — they produce surprise and discomposure in the congregation, may endanger the engaging the Minister himself in scenes of altercation and contention, that may derogate from the proper dignity of his functions, and may produce unhallowed consequences, very inconsistent with the purposes for which himself and the assembly are collected together. In the present case you have admitted that no such occasion had occurred as called for your interposition. It becomes therefore my painful duty to admonish you to guard your zeal with more temper and discretion, and I so admonish you; and further I must, in obedience to the statute, suspend you from the administration of your office for one fortnight to be computed from this day."

Rare and infrequent as the necessity for this public admonition appears to have been, still more uncommon was the occasion for his pronouncing the extreme penalty of misconduct, the sentence of deprivation. In one instance only, during a space of nearly forty years, that of the Rev. Mr. Stone, against whom criminal proceedings, under the 3d of Elizabeth, had been instituted for maintaining and affirming doctrines contrary to the articles of religion as by law established, was this irksome task imposed upon him. In performing it he justified the proceeding with such a clear strength of reasoning that even those who pitied the offender, acquiesced in the justice of his doom. Recent discussions at Oxford tend to show that his remarks are worth the noting, and would repay the most attentive perusal. "It is no business of mine," he said, "to vindicate the policy of any legislative act, but to enforce the observance of it. I cannot omit, how-

ever, to observe that it is essential to the nature of every establishment, and necessary for the preservation of the interests of the laity as well as of the clergy, that the preaching diversity of opinions shall not be fed out of the appointments of the Established Church, since the Church itself would be otherwise overwhelmed with the variety of opinions, which must, in the great mass of human character, arise out of the infirmity of our common nature. In this purpose it has been deemed expedient to the best interests of Christianity, that there should be an appointed Liturgy, to which the offices of public worship should conform, and, as to preaching, that it should be according to those doctrines which the state has adopted as the rational expositions of the Christian faith. It is of the utmost importance that this system should be maintained. For what would be the state and condition of public worship if every man was at liberty to preach, from the pulpit of the church, whatever doctrines he may think proper to hold? Miserable would be the condition of the laity, if any such pretension could be maintained by the Clergy. It is said that Scripture alone is sufficient. But though the Clergy of the Church of England have been always eminently distinguished for their learning and piety, there may yet be, in such a number of persons, weak and imprudent and fanciful individuals, and what would be the condition of the Church, if such persons might preach whatever doctrines they think proper to maintain? As the law now is, every one goes to his parochial church with a certainty of not feeling any of his solemn opinions offended. If any person dissents, a remedy is provided by the mild and wise spirit of toleration which is provided in modern times, and which allows that he should join himself to persons of persuasions similar to his own. But that any Clergyman should assume the liberty of inculcating his own private opinions, in direct opposition to the doctrines of the Established Church, in a place set apart for its own public worship, is not more contrary to the nature of a national church, than to all honest and rational conduct. Nor is this restraint inconsistent with Christian liberty, for to what purpose is it directed, but to insure in the Established Church that uniformity which tends to edification,

leaving individuals to go elsewhere according to the private persuasions they may entertain? It is, therefore, a restraint essential to the security of the Church, and it would be a gross contradiction to its fundamental purpose to say, that it is liable to the reproach of persecution, if it does not pay its ministers for maintaining doctrines contrary to its own."

In addition to causes of a purely spiritual nature, the ecclesiastical jurisdiction has cognisance of suits partaking both of a spiritual and civil character, such as suits for tithes and church-rates, and others of a civil and temporal description only, of which matrimonial causes, suits for separation, and for nullity of marriage, are the chief. In the judgments which Sir Wm. Scott gave on these grave and important questions, involving the most sacred rights of individuals, and the best interests of society, his benevolent wisdom and discerning justice are engraved in letters that will never be effaced. We should particularly direct the attention of all who delight in lucid argument, in moral philosophy, and classical eloquence to the cases of Dalrymple v. Dalrymple, Evans, Sullivan, and Loveden, in the Consistory Reports of Haggard and Phillimore. In the former volumes especially are concentrated some of the most beautiful specimens of clear reasoning and a chastened style to be found in the language. Religion might select passages in them for her texts, and philosophy discourse on them for mottoes. They contain the ipsissima verba of "the old man eloquent," the best words in the best places. Aware of the value of the gems, he has bestowed extreme labour on their setting. He is said to have had the press stopped for the correction of a single line, and to have been anxious even in the marshalling of his colons. Dr. Phillimore relates that, at his particular request, the three first reports were submitted to his revision before they were published, and severally underwent repeated and elaborate corrections from his hand, as the MSS. and proof most abundantly testified. They were as full of scores and interlineations as a bill of the lower House corrected by the Lords. Lord Brougham, in one of his bitter moods, scoffed at the florid civilian, who talked of "dockets betraying a taint and leaven of suspicion." In some instances the lan-

guage may be slightly inflated — where he says, for example, "When the claimant steps out of his affidavit, he steps into empty space." The attention to the diction may here and there degenerate into purism, *e.g.* "The Court is disinclined to stir a finger to relieve either, both sticking deep in eodem luto." Sir Wm. Scott would not soil his lips with the monosyllable mud, evincing the same overstrained delicacy as induced Canning to use the periphrasis of a "certain well-known domestic animal," that he might escape making use of the proverbial saying of cats-paw.* When Sir William is compelled to adopt the plain English of the lower orders, he prefaces with an apology, "Passionate words do not, according to the vulgar observation, break bones." As if aware of this refinement, and fearful of a monotonous elegance, he sometimes introduces, with subtle art, a strong idiomatic word, "The man at last *lugs* out the licence." "This Court is not *hungry* after jurisdiction." But even when minute criticism has been exhausted on the master-pieces of this cunning artificer, the symmetry of the whole confirms the judgment of Lord Lyndhurst — testimony can go no higher — that it is as vain to praise, as to imitate them. Nor is the verbal critic more delighted with the texture, than the scholar with the constant illustrations from art or literature in which these judgments abound. A stray graduate from Oxford chanced to be present in his little court, forming, with some twenty others, a sort of drawing-room assembly, when a case of slight importance, of nullity of marriage, was brought forward by a spinster, as she was termed in the articles, rejoicing in the euphonious name of Elizabeth Apollonia Gray, falsely called Mansel. Dr. Dodson rested his prayer on the fact of a false publication: she was termed by the banns Eliza Gray only. The publication was but of one name, and even that was altered Eliza for Elizabeth. Sir Wm. Scott said as to the last observation, "that Elizabeth and Eliza were one and the same name, for which there was the highest authority in the English language. Johnson, in his poem of London, had these lines:

> "'Fir'd at the scene that gave Eliza birth,
> We kneel and kiss the consecrated earth.'

* This periphrasis might have been said to add to the humour of the allusion.

"This was supposed to be uttered as the parties were going down the river; and there was even a marginal annotation he remembered of this kind: 'Greenwich, the birth-place of Queen Elizabeth.' As to the identity of this person, he could not readily suppose that she was known among her friends by all these names, particularly by that of Apollonia. Doubtless the name of Apollonia had been given to her, as was the custom of the Roman Catholic Church, after the patron saint to whose care the child was dedicated at its baptism. The saint, if he could recollect the legend rightly, presided over the human teeth: her own having been plucked out of her mouth, as one part of her sentence of martyrdom. On the whole, and till better satisfied, the Court could not for the present receive the allegation." The case was too trifling to be reported, but we mention it to show the fulness of the judge's mind; that his discourses "were pressed together and running over," not merely with the weightier matters of the law, but with all that could illustrate or embellish law, — with history, legend, poetry. Our eulogy may appear extravagant to those who are not familiar with the series of these admirable essays on life and manners; we shall proceed to justify it by a few proofs collected without difficulty from an ample store-house. How excellent is the following short analysis of the nature, origin, and sanctity of marriage:

"Marriage in its origin is a contract of natural love; it may exist between individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind. It is the parent, not the child, of civil society — 'Principium urbis et quasi seminarium reipublicæ' (Cicero de Officiis). In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. In most civilised countries, acting under a sense of the force of sacred obligations, it has had the sanctions of religion superadded. It then becomes a religious, as well as a natural and civil contract; for it is a great mistake to suppose that, because it is the one, therefore it may not likewise be the other. Heaven itself is made a party to the contract, and the consent of the individuals pledged to each other is ratified, and consecrated by a vow to

God. It was natural enough that such a contract should, under the religious system which prevailed in Europe, fall under ecclesiastical notice and cognisance with respect both to its theological and legal constitution, though it is not unworthy of remark, that, amidst the manifold ritual provisions made by the Divine Lawgiver of the Jews, for various offices and transactions of life, there is no ceremony prescribed for the celebration of marriage. In the Christian church, marriage was elevated in a later age to the dignity of a sacrament in consequence of its divine institution; and of some expressions of high and mysterious import respecting it contained in the sacred writings."

That married people must bear each other's infirmities— that the only way to live happily is not to regard trifles— that good temper and habits of mutual concession form the best safeguards of wedded life, are truths which pall by repetition, and pass unheeded from their triteness; but to such truths, as they "came mended from the lips" of the civilian, in accents of the most winning persuasiveness, who could refuse to listen? "To vindicate the policy of the law is no necessary part of the office of a judge, but if it were, it would not be difficult to show that the law in this respect has acted with its usual wisdom and humanity; with that true wisdom, and that real humanity, which regards the general interests of mankind. For, though in particular cases the repugnance of the law to dissolve the obligations of matrimonial cohabitation, may operate with great severity on individuals, yet it must be carefully remembered that the general happiness of the married life is secured by its indissolubility. When people understand that they must live together, except for a very few reasons known to the law, they learn to soften by mutual accommodation that yoke, which they know they cannot shake off— they become good husbands and good wives from the necessity of remaining husbands and wives, for necessity is a powerful master in teaching the duties which it imposes. If it were once understood that upon mutual disgust married persons might be legally separated, many couples who now pass through the world with mutual comfort— with attention to their common

offspring, and to the moral order of civil society, might have been at this moment living in a state of mutual unkindness — in a state of estrangement from their common offspring, and in a state of the most licentious and unreserved immorality. In this case, as in many others, the happiness of some individuals must be sacrificed to the greater and more general good. To be sure, if people come together in marriage with the extravagant expectation that all are to be halcyon days — the husband conceiving that all is to be authority with him, and the wife that all is to be accommodation to her, every body sees how that must end; but if they come together with a prospect of happiness, they must come with the reflection that not bringing perfection in themselves they have no right to expect it on the other side — that, having respectively many infirmities of their own to be overlooked, they must overlook the infirmities of each other." . . . Sir William Scott explains away the female notion of cruelty — that an angry look or word, inattention or indifference, will not constitute the legal offence, and continues: "Still less is it cruelty where it wounds not the natural feelings, but the acquired feelings arising from particular rank and situation; for the Court has no scale of sensibilities, by which it can gauge the quantum of injury done and felt. The great ends of marriage may very well be carried on without the use of a carriage, or the use of a servant, and if people will quarrel about such matters, and which they certainly may do in many cases with a great deal of acrimony, and sometimes with much reason, they yet must decide such matters as well as they can in their own domestic forum. Petty vexations applied to a certain constitution of mind may certainly in time wear out the animal machine, but still they are not cases of legal relief; people must relieve themselves as well as they can by prudent resistance — by calling in the succours of religion, and the consolations of friendship, but the aid of courts is not to be resorted to in such cases with any effect. . . If two persons have pledged themselves at the altar of God to spend their lives together for purposes that reach much beyond themselves, it is a doctrine to which the morality of the law gives no countenance that they may by

private consent dissolve the bands of this solemn tie, and throw themselves upon society in the undefined and dangerous characters of a wife without a husband, and a husband without a wife. There are undoubtedly cases for which a separation is provided, but it must be lawfully decreed by public authority, and for reasons which the public wisdom approves. Mere turbulence of temper, petulance of manners, infirmity of body or mind, are not numbered among these causes. When they occur, their effects are to be subdued by management if possible, or submitted to with patience." The history that ensues of a suit in Doctors' Commons is a perfect dramatic sketch: — "Two persons marry together, both of good moral character, but with something of warmth and sensibility in each of their tempers; the husband is occasionally inattentive, the wife has a vivacity that sometimes offends, and sometimes is offended; something like unkindness is produced, and is then easily inflamed; the lady broods over petty resentments, which are anxiously fed by the busy whispers of humble confidantes; her complaints, aggravated by their reports, are carried to her relations, and meet perhaps with a facility of reception from their partial, but well intentioned, minds. A state of mutual irritation ensues — something like incivility is continually practising, and where it is not practised it is continually suspected: every word, every act, every look has a meaning attached to it; it becomes a contest of spirit in form between two persons eager to take, and not absolutely backward to give, offence: at last the husband breaks up the family connection — treaties are attempted, and they miscarry — then, for the first time, a suit of cruelty is thought of; a libel is given in, black with criminating matter — recrimination comes from the other side; accusations rain heavy and thick on all sides, till all is involved in gloom, and the parties lose total sight of each other's real character, and of the truth of every one fact which is involved in the cause. Out of this state of darkness and error it will not be easy for them to find their way. It were much to be wished that they could find it back again to domestic peace and happiness. Mr. Evans has received a complete vindication of his character. Standing upon that

ground, I trust he will act prudently and generously; for generosity is prudence in such circumstances. He will do well to remember that the person he contends with is one over whom victory is painful; that she is one to whom he is bound by every tie that can fasten the heart of one human being to another; she is the partner of his bed—the mother of his offspring; and, if mistakes have been committed, and grievous mistakes have been committed most certainly in this suit, she is still that person whose mistakes he is bound to cover, not only from his own notice, but, as far as he can, from that of every other person in the world. Mrs. Evans has likewise something to forget, and I hope she has not to learn that the dignity of a wife cannot be violated by submission to her husband." . . . There are entwined in this judgment of the case Evans v. Evans, like some delicately tinted threads in a piece of tapestry, many touches of Sir William Scott's peculiar humour. The beautiful appeal to the feelings which we have just quoted, is not in better taste than the subdued but pleasant style of irony with which, during the progress of his argument, he ridicules the various acts of petty annoyance magnified into acts of atrocious cruelty. "The basis of the fact is extremely slight, and all beyond it is colour—is exaggeration—is passion. It has been pleaded that Mr. Evans accustomed himself to distress his wife by making a violent noise with a hammer close to her, while she was in a very weak and sickly state. I do not believe that it could have entered into the conception of the most ingenious person in this country to have imagined how this would have ended—to have imagined that it should end in this gentleman's cracking almonds in an adjoining room with a hammer, which, being proper for such a purpose, could be no very ponderous instrument: and his afterwards coming to eat them in his wife's apartment. I do protest it is so singular a conceit, that, if I did not see a great deal of unhappy seriousness in other parts of this cause, I might rather suspect that some levity was here intended against the Court. I am sure of this, that if a man wanted to burlesque the Ecclesiastical Courts, he could not do it more effectually than by representing that such a Court had seriously enter-

tained a complaint against a husband, founded on the fact of his having munched almonds in the apartment of his wife. An additional fact of cruelty is that he refused the nurse the elbow-chair. That, every one knows, is one of the high prerogatives of these ladies, and one would have expected that the nurse would have complained with no little acrimony on that account; but, on the contrary, she is examined, and I do not find that this circumstance of the elbow-chair has made that impression on her mind which it seems to have done on that of Mademoiselle Bobillier, whose depositions are very descriptive, full of imagery and epithet, something in the style really of a French novel, or the trash of a circulating library." Another sketch of matrimonial jars between other parties is drawn with much liveliness, Waring v. Waring:—"She attacked him, pulled off his wig, and carried it down stairs, and soon afterwards returned with the poker, and threatened to strike him, on which he went into the bed-room, she carrying off the wig, the 'opima spolia' of this not 'incruenta victoria.' In the mean time he followed her in vain, asking for, and attempting to recover, his wig, which had been pinned up in the window-curtains of the drawing-room, and not discovered and recaptured till the next day. It is difficult to speak of such scenes with gravity, if they did not most seriously affect the peace and happiness of the family. It was not amongst this lady's peculiarities that she had not a will of her own. In this instance she appears to have taken the law into her own hands, and those hands were most energetically employed."

It would have been well for Sir William Scott, if, whilst he thus sportively handled those dangerous playthings, marriage engagements and their possibilities, he had himself learned caution from the admirable lessons which he taught; but when did physician heal himself, or even the genius of an Abernethy profit by his own book! As if to show the fallibility of human wisdom, and to point a moral that no man must be reckoned completely happy before death, he, the most pure and correct of men both in his judicial and domestic relations, was doomed to suffer much uneasiness from a single act of rashness in both. He became a widower in

1809, his first wife, to whom he had been an affectionate husband, having died suddenly on the 4th of September, in that year, when Sir William was on a tour in Scotland.

She left him two children, William and Mary Anne; two others, a son and daughter, died in infancy. The eldest child, who alone survived her father, and that for a very short period, was twice married. Her first husband was Colonel Thomas Townsend, a gentleman of Warwickshire; and after his death, she became the second wife of Viscount Sidmouth. The death of Lord Stowell's only son, William, preceded by two months his own.

"As no descendant survives to be pained by the disclosure, we are bound to make one exception to the praise of his amiability in private life, and to mention a misconduct which brought its own retributive punishment. William Scott, his only son, when grown to manhood, had formed an attachment that was unexceptionable. His father would not make him a sufficient allowance to enable him to marry. The intemperate habits of the son increased under the disappointment, and he died of a broken constitution before his father, but who was happily unconscious of his loss."*

He was naturally attached to female society, and keenly felt the void which his wife's death created in the domestic circle. The circumstance was curious which led to his second engagement. The Marquis of Sligo, then a young nobleman on his travels, or voyages rather, had enticed two picked seamen to man his own vesssel, and persuaded them to desert from one of the king's ships in the Mediterranean during the war. They had been inveigled by his servants on board his yacht, and, when the vessel was searched, the Marquis had pledged his honour that they were not on board. He was prosecuted before Sir William Scott and Lord Ellenborough at the Admiralty Sessions at the Old Bailey for this unworthy cheat; and his mother, the Marchioness of Sligo, with at least questionable taste, chose to be present to the close of the trial. Amongst the spectators was also the Duke of Clarence. At the very commencement the counsel for the Marquis stated that his lordship was anxious to plead

* Mr. W. E. Surtees.

guilty as to part of the indictment, and not guilty as to the rest; but Lord Ellenborough sternly answered, "The indictment must not be garbled — he must plead guilty to the whole, or not guilty to the whole." On this Lord Sligo pleaded not guilty.

The evidence was then heard. Lord Ellenborough summed up for a conviction, and the jury at once pronounced a verdict of guilty.

On the following day Mr. Scarlett, the leading counsel for the defendant, stated to the court that it had been no wish of his client to justify his proceedings by the plea which he had offered; that he had desired to plead guilty, but that his intention had been overruled by his professional advisers, who thought that he could not with propriety plead guilty to all the counts in the indictment.

After this explanation, it only remained to pass sentence, a duty which devolved on Sir William Scott, who thus addressed the distinguished prisoner: —

"It now becomes my painful duty to affix the penalty, which, on the result of a laborious inquiry, the country expects as a reparation for its violated laws. It is unnecessary for me to dwell on the magnitude of the offence; on the incalculable mischief which it might produce to the public safety; or on those unworthy practices without which the criminal purpose could not have been effected — practices as adverse, no doubt, to the nature of your lordship's present disposition as they are to those principles of honour which elevated rank ought to generate. Your lordship's exalted rank and ample fortune made your country expect from you a conduct equally dignified. Unfortunately, in the folly and indiscretion of youth, you have been betrayed into a forgetfulness of what you owed to your country and to yourself; you have perverted the great advantages which you possessed to withdraw your inferiors from their duty, thereby exposing them to punishment, and weakening the defence of your country; and in the prosecution of your design, your lordship has descended to practices of dissimulation and deceit. It is unnecessary for me to express my own sentiments on this subject; sentiments which no doubt are equally felt by

your lordship. It will become the duty of your lordship to make the effects of these sentiments visible in your future life, and endeavour to efface the memory of these transactions by an ardent devotion to the service of your country, and by an application of all your efforts to its safety, prosperity, and glory. Though these may be the feelings and intentions of your lordship, yet the country expects that you should receive such an admonition as may operate for a useful example, and which may confirm that boasted principle of the English constitution — that no rank, however high — no fortune, however ample — no regrets, however severe — can prevent the due administration and enforcement of justice."

Notwithstanding the just severity of the sentence on the prevaricating peer, which closed this admirable address, that he should pay a fine of 5000*l.*, and be imprisoned four months in Newgate, his mother expressed great delight at the dignified bearing and bland courtesy of the Admiralty Judge.

The Dowager Lady Sligo passed to Sir William Scott in court a slip of paper, on which she had written how happy she should think it for her son, if he could but continue to have the advantage of such paternal counsels! *

His amenities had certainly all the effect of contrast from the harsh summing up of his yoke-fellow on the bench. The flattery of a woman, always dangerous, proved in this instance fatally seductive to the future peace of the polite civilian. It could not have been more fatal had she wished to avenge her son.

The acquaintance so inauspiciously commenced soon ripened into tenderness; the lovers met in court, December 16th, 1812, and on the 10th of April following the retailers of scandal were charmed with the intelligence that the grave Sir William Scott, then in his sixty-ninth year, was actually married to Louisa Catherine, relict of John Marquis of Sligo, and daughter and coheiress of the distinguished Admiral Richard Earl Howe. The sarcastic wit of Jekyll exploded in many wicked gibes and epithalamia at the expense of the venerable bridegroom, and the *on dits* of the West End, which unfortunately had not penetrated to the city, were too

* Mr. W. E. Surtees.

piquant with the peculiarities of the aristocratic bride to forebode a happy union. Lord Eldon argued ill of the engagement, and would not sanction the wedding with his presence. Nor had the Marchioness the taste or temper likely to render her introduction into any family an accession to its happiness. And Sir William Scott was soon called himself to practise those lessons of domestic patience and forgiveness which, from the consistorial chair, he had taught so eloquently to others. Amongst the aggravating modes which his matronly bride discovered of rendering her husband uncomfortable, and herself and him ridiculous, was that of giving him, in the presence of company, lectures upon manners.*

A century had passed since Addison ventured—it was the boldest act of his life—to marry the Countess of Warwick, and the infelicity of the aspiring scholar might have deterred others of his class from seeking unequal alliances. As Addison took refuge at Button's with the wits, Sir William Scott sought shelter in the hospitable hall of the Middle Temple; and, over the crusted port at the benchers' table, forgot domestic inquietudes. His wife's death in August, 1817, released him from those toils which he had rashly suffered to be wound around him, and in which he was far too old and too wary to be again insnared.

The second infelicity, which dimmed for a short space his otherwise auspicious course, was a supposed error in judgment, in having excommunicated an attorney of the name of Beaurain, without having cited him, because he had refused to become guardian ad litem for his son when assigned by the Court.

His wife had sued for a divorce against the youth, who was a minor, for grievous cruelty, and the machinery of the Court could not be put in motion for her relief without assigning a guardian. As the unfortunate young woman had waived costs and alimony, the only inconvenience the father could have sustained was the appearing once in court. He obstinately refused to appear, and barred the injured complainant from relief. Sir William Scott, indignant at the attorney's conduct, and acting in a new question on the

* Surtees' "Sketch of Lord Stowell."

exigency of the moment, signed the sentence of excommunication without previously citing him to appear. The excommunication was read in his parish church to a congregation of some 500 persons; and the attorney, unable to pursue his business, was thrown into prison. His only resource was, by petition and memorial, to work on the compassion and fears of the judge. He thus contrived to extort 150*l.*; but rising in his importunities, and being met with a positive refusal, he petitioned parliament, and brought a special action on the case. It was very doubtful whether Sir William Scott had not been justified by the law and practice of his court in issuing the excommunication, — so doubtful that Sir John Nicholl had, on appeal, confirmed the judgment, and Lord Ellenborough summed up the evidence in his favour, declaring, very reasonably, that he could not assert that such was not the law of that court when on appeal it was decided so to be. The jury, however, in the exercise of a merciful discretion to the plaintiff, found a verdict in his favour, with forty shillings damages, but accompanied their verdict with a written declaration which must have soothed the wounded feelings of the sensitive defendant. "The jury beg leave to assure the Lord Chief Justice that, by this their verdict, they do not mean to attach the slightest impeachment on the most respectable character of Sir William Scott." It realised the wish of his motto, "Sit sine labe."

CHAPTER VII.

THE LIFE OF LORD STOWELL CONCLUDED.

If we follow the steps of Sir William Scott from the Consistory to the Admiralty Court, we shall discover equal traces of judicial excellence, which have fortunately been preserved with scrupulous care. The commencement of his judgments forms an era in the history of English legislation. Dr. Robinson, in a happy moment for his own and predecessor's fame, determined, in Michaelmas Term, 1798, on his first taking his seat, to add to the collection of reports in the other Courts of Judicature those of the High Court of Admiralty. He justly thought that the honour and interests of our own country were too deeply and extensively involved in the administration of the law of nations, not to render it highly proper to be known at home, in what manner, and on what principles, its tribunals administered that species of law; whilst to foreign states and their subjects, whose commercial concerns were every day discussed and decided there, it was most expedient that such information should be given. These Reports, and their continuation in the valuable publications of Drs. Dodson, Edwards, and Haggard, entitle the Admiralty Judge to the high praise of being the author of the law of his court — its founder and legal architect. With the exception of a few manuscript notes of Sir E. Simpson, some scattered memoranda among the records of the Tower, very obscure and imperfect, and occasional references to tradition or personal memory, there appear to have been no precedents for the guidance of Sir William Scott, in adjudicating upon the many difficult and novel cases which were submitted to him during that long and complicated war, the most important in our annals, involving property to the amount of some millions, and comprehending in their extent the rights of settlers in the most distant regions of the globe, the almost empyrean

sovereignty of princes in the East, and the wild laws of the Algerines. It may be remarked, by the way, that he paid particular attention to the claims of Turkey and Portugal, assigning as a reason, that the former country was connected with this by ancient treaties and engagements of a peculiar nature, and that the latter had long maintained a singular relation of something more than amity to this nation. The legal interruption to navigation which both belligerent parties may create against neutrals — the right of joint captors — cases of unlawful detention and seizure — the force and construction of different treaties — the existence of an actual blockade — the condemnation of merchant ships, for resisting search — questions of domicile, which turn frequently on minute considerations — the extent of the protection of cartel — the extent of territorial claims — the validity of orders in council, are among the subjects adjudicated on by that able jurist, with such unerring accuracy that, though often appealed against, there is no instance in our remembrance of a single one being reversed. A code might be formed from our Admiralty reports, far more complete, full, and satisfactory than the works of the Dutch or Swedish writers on the law of nations could furnish. Coleridge, after recommending a perusal to all statesmen of Grotius, Bynkershoek, Puffendorf, Wolfe, and Vattel, adds the Reports of Dr. Robinson to the catalogue, as comprehending whatever is most valuable in those authors, with many important improvements and additions, declaring truly that international law is under no less obligation to the Admiralty Judge than the law of commercial proceedings was to the late Lord Mansfield. "As I have never seen Sir William Scott," continues that admirable author, "nor either by myself or my connections enjoy the honour of the remotest acquaintance with him, I trust even by those who may think my opinion erroneous, I shall at least not be suspected of intentional flattery." *

Authorities equally distinguished, Grenville, and Canning, and Peel, have exhausted the terms of eulogy on a Judge whose opinions, they declared, were revered in every part of

* Coleridge's "Table Talk."

the world where a love of justice and equity prevailed. But a still more convincing tribute to his merit, above the suspicion of partiality, has been supplied by a generous adversary. Lord Stowell printed, for private distribution, some copies of his judgments, and sent one to the Admiralty Judge of the United States. After acknowledging the present, this gentleman continued — "In the excitement caused by the hostilities then raging between our countries, I frequently impugned your judgments and considered them as severe and partial, but on a calm review of your decisions after a lapse of years, I am bound to confess my entire conviction both of their accuracy and equity. I have taken care that they shall form the basis of the maritime law of the United States, and I have no hesitation in saying that they ought to do so in that of every civilised country in the world." Mr. Justice Storey, in his valuable Commentaries, reiterates this eulogy in the strongest terms.

We have strung these testimonies together like the laudatory verses prefixed to an old poem, that we may tempt the reader to peruse the judgments of Sir W. Scott themselves; for the fullest extracts, however illustrative of his dignity, firmness, and abundant learning, can afford at the best but very inadequate specimens.

We have just referred to his condemnation of certain American vessels, the Fox, Snipe, and Wasp. The short history of the transaction was this. In November, 1806, the emperor of France had published a decree from Berlin, declaring the British Isles to be in a state of blockade. The British Government, in 1807, published retaliatory orders in council against France, declaring those ports from which the British flag was excluded to be also in blockade, but announcing at the same time that such retaliatory measures were only meant to continue till the decree should be revoked. Bordeaux was one of the ports in blockade. In the spring of 1812, an American ship was taken by our cruizers on her voyage to Bordeaux, and condemned under these orders. In the May of that year, the American resident at London presented to the Government a paper bearing date the April of the preceding year, and purporting to be a document repealing the Berlin decree so far as concerned American vessels. Sir

William Scott would not allow any validity to this asserted revocation: —

"Taking all the evidence resulting from the conduct of the French government viewed in every possible direction: from that of the American government and its representative; from that of the French tribunals; in short, from that of every moral agent whose conduct could be at all connected with this paper, it results that this paper never appeared till above twelve months after it bears date, and that it did not appear because, in truth, it did not physically exist. But suppose, for a moment, that it was really executed at the time it bears date, would that give it a legal existence till it was actually promulged? Certainly not! — in all reason and in all practice such an instrument operates only from the date of its promulgation. If accident has delayed for a great length of time the publication, it ought to be re-executed, and with a reference to the real time of its promulgation; or it should be issued with an explanation of the causes that have deferred it, and pointing to the time of its real operation. But if it be sent into the world with its antiquated date, claiming the authority of that date and of that date only; it has either that authority or it has none. That authority it cannot have, and it is just as deficient in point of honest claim as if the execution had taken place in the fraudulent mode of an ante-dated instrument. In either way, I should depart from the sobriety of judicial language, if I described it in the terms that in my apprehension belong to it. It is one other instance of the exorbitant demands which that person (Napoleon) is in the habit of making on the credulity of mankind. It is sufficient to observe that in my judgment its authority is fully disproved — that it comes into the world with such indisputable characters of falsehood, as utterly destroy its operative credit. It likewise appears to follow that the Court cannot make the order prayed for further proof, because, if it is once established that the document is born with such a stain of corruption in its very essence and constitution, it is out of the reach of any purifying means that can be applied to it; and, least of all, such as are to be applied by those to whom it owes that vicious essence and constitution. They who fabricate such an instrument will fabricate the means of supporting it,

and this Court does not, where imposition is intended on itself, resort for proofs of good faith to the officina fraudis which attempted the imposition. What this Court demands is a clear and determinate rule of law acted upon in a clear and determinate manner; not a crooked and fluctuating practice, bending to present policy or even to present humour. With these observations I dismiss this case, having brought to the consideration of it, as I trust, all that impartiality and independence of mind so strongly pressed upon me by advice of which I should be less disposed to doubt the propriety, if I had in the slightest degree felt the necessity. In a case which, though not attended with much difficulty, is not without its delicacy, I have endeavoured to discharge my duty, as in other cases, certainly without any disregard to the satisfaction of other minds, but indispensably to the satisfaction of my own."

The following was another rebuke, stern yet urbane, which the Admiralty Judge administered to a still worse fraud upon the law of nations. "The magistrates of Emden certified that the owner was an inhabitant, he himself having positively sworn that he was never there in his life. Now, in what manner, or by what means this certificate has been procured, whether by imposition on the magistrates, or whether by some inaccuracy on the part of the magistrates themselves, it is impossible for me to conjecture, but I must add that inconveniences from this kind of conduct may be likely to attach on the inhabitants of that city, if not prevented by those who have the public care of that place, in guarding against practices of such a nature. I should be extremely sorry to suppose that any body of magistrates acted in their public conduct with an insufficient sense of public duty, and of that guarded honour and integrity which belong to public situations, and without which the intercourse of mankind in different states cannot conveniently be supported; and I, therefore, only desire that it may be intimated to the magistrates of Emden, that there is a danger of a surprise on their vigilance in these matters, and that it concerns the public interests of that place to have that vigilance more laboriously exerted against impositions of this sort,—impositions which I must conceive to have been practised upon them, because

on any other supposition, undoubtedly I should be under the necessity of expressing myself with less civility than the relation which I bear to the magistrates of other countries would induce me to do."

In the decision of that important question which, even in the days of Cromwell, vexed and agitated maritime states, whether belligerent powers had a right to search neutral vessels, the conclusiveness of his reasoning silenced those to whom the judgment was most unwelcome. Some Swedish ships, laden with naval stores, and bound to ports in the Mediterranean, having met a British force, and resisted search, were seized. Sir Wm. Scott justified the seizure. "The seat of judicial authority," he observed, "is locally here in the belligerent country, according to the known law and practice of nations, but the law itself has no locality. It is the duty of the person who sits here to determine this question exactly as he would determine the same question if sitting at Stockholm: to assert no pretensions on the part of Great Britain, which he would not allow to Sweden in the same circumstances, and to impose no duties on Sweden as a neutral country which he would not admit to belong to Great Britain in the same character. If any negotiations have pledged, as has been intimated, the honour and good faith of this country, I can only say that it has been much the habit of this country to redeem pledges of so sacred a nature. But my business is merely to decide whether in a court of the law of nations, a pretension can be legally maintained, which has for its purpose neither more nor less than to extinguish the right of maritime capture in war, and to do this how? by the direct use of hostile force on the part of a neutral state. It is high time that the legal merit of such a pretension should be disposed of one way or other: it has been for some few years past preparing in Europe. It is extremely fit that it should be brought to the test of a judicial decision: for a worse state of things cannot exist than that of an undetermined conflict between the ancient law of nations and a modern project of innovation utterly inconsistent with it, and, in my apprehension, not more inconsistent with it than with the amity of neighbouring states, and the personal safety of

their respective subjects." Lord Stowell's comments on the instructions to the commander of the Maria Robinson, "disrobed of mere civility of phrase," were thus tersely given. "If you meet with the cruisers of the belligerent states, and they express an intention of visiting and searching the merchant ships, you are to talk them out of their purpose if you can, and, if you cannot, you are to fight them out of it. That is the plain English and, I presume, the plain Swedish of the matter."

For the illustration of many singular cases which the casualties of war brought before him, the Admiralty Judge, whose mind was full of classical recollections, used to draw largely on his early studies. In ascertaining the national character of a resident at Calcutta, he made a just distinction between oriental customs and those of the western world. "In the West, alien merchants mix in the society of the natives; access and intermixture are permitted, and they become incorporated to almost the full extent. But in the East, from the oldest time, an immiscible character has been kept up. Foreigners are not admitted into the general body and mass of the society of the nation: they continue strangers and sojourners as all their fathers were:

"'Doris amara suam non intermisceat undam.'"

The following is another instance of felicitous quotation. "This is a case of diffident and modest merit. The 5th article states that she (the privateer) made an attempt to get between the prize in question and the land, and would have pursued it, but that she herself became the object of chase to four other vessels that came out from the coast. Instead of the pursuer she became the object of pursuit. It is the first instance, I believe, in which the character of a captor has been claimed by a flying vessel: 'Lepus tute es, et pulpamentum quæris.'"

And again: "There is said to be a fashion in crimes, and piracy, at least in its simple and original form, is no longer in vogue. Time was, when the spirit of buccaneering approached, in some degree, to the spirit of chivalry in point of adventure; and the practice of it was thought to reflect no disgrace on the distinguished Englishmen who engaged in it. The

grave Judge Scaliger observes, in a strain rather of doubtful compliment, 'nulli melius piraticam exercent quàm Angli.' But now pirates, in the ancient meaning of the term, are literally 'rari nantes' on the high seas."

It was not till some time after the close of the war that Sir Wm. Scott received the honour of the peerage which he had so fairly earned. On the coronation of George IV. his brother, Lord Eldon, having been raised, by two steps, to the dignity of an earl, he was created by a patent, dated July 17. 1821, Baron Stowell. So far back as 1805, this promotion had been confidently expected by himself and friends. Windham and Heber had canvassed Oxford in the anticipation of an immediate vacancy; but, through some court intrigue, the hopes of all parties proved on that occasion fallacious. Heartily do we wish that he had been called up to the house of Lords at that period, for we make no doubt that he would then have distinguished himself no less in the Senate than on the Judgment Seat. The order and decorum observed by the Peers in such strong contrast with the turbulence of the Commons — the fewness of the numbers — the conversational tone of debate — the high chivalrous bearing of his audience, must have allured him into speech. But the age of seventy-six was obviously too late, and, with the exception of an animated reply on the Marriage Act, Lord Stowell satisfied his conservatism by a silent vote, and of late by a steady proxy.

Luckily for the ease of the veteran judge, the peace had introduced topics for decision in his Admiralty Court of a less grave and weighty character than heretofore, but better suited to his "chair days," his declining years and strength. Instead of rolling his thunders over remote dynasties, and encompassing the political horizon in his judgments, he was now content to calculate the value of seventy barrels of flour seized by a revenue cutter, or as many hogsheads of sugar saved by a Deal boat: to determine every-day cases of salvage, head-money, questions of derelict and revenue, cases of collision, bottomry bonds, and seamen's wages.

Even such dry and dull subjects as these he contrived occasionally to relieve by the exercise of a light and playful humour; for the adjudication of them stood in no need of

keen acumen or research. Th objections to a proposed scheme of remuneration were overruled with good-humoured satire. "Much lamentation has been indulged in on the small reward that Captain Thompson will receive for this adventure. The Court may entertain a wish that this polacre had been a galleon for the benefit of these British officers: but it has not the power of converting a polacre into a galleon, and petty funds can yield but petty profits. I do not doubt that Captain Thompson is a man fitted for great and daring enterprises; but this is not an adventure of that class. Here is no room for extraordinary daring, or extraordinary skill and management. The only danger to be contended with is that of the wind blowing fresh, and the waves running high, and this to be encountered in a proper boat, and manned in an able manner, and at the distance of a musket shot from the shore. It appears therefore to me that it needs a strong magnifying glass to see in this action anything that might not have been done by a set of young men who are members of any of the boat clubs on the Thames. I cannot see in this case anything so bold as to call upon me to undertake the bolder enterprise of controlling the royal warrant."

The claims of peculating cupidity would sometimes be exposed by the high-minded judge in a strain of keen raillery. "I come now to examine the pretensions of this magistrate, and I can try them only by his own affidavit, as there is no other evidence which takes any notice of them. I do not remember any case in which a magistrate acting in discharge of his public duty has demanded to be considered as a salvor, and, therefore, I do not much wonder at the diffidence which has restrained this gentleman from giving in his claim till a very late hour: this, however, is certain, that if a magistrate acting in his public duty on such an occasion, should go beyond the limits of his official duty in giving extraordinary assistance, he would have an undeniable right to be considered as a salvor; it will therefore be necessary to inquire what has been the extent of this gentleman's services; if they amount only to the ordinary discharge of his duty, I shall be disposed to leave him to the general reward of all good magistrates, the fair estimation of his countrymen, and the consciousness

of his own right conduct. Now, I do not discover any peculiar vigilance or activity in his conduct on this occasion: the first finders sent to him to inform him of the situation of the vessel, and offered to put it into his possession; so far he is only passive: but he goes on to state, as an eminent service, that he sent fifteen men, under the obligation of an oath, which he administered to them, to assist, and that by their exertions the ship was righted in the harbour, and two hundred persons, who had come down, as it is said, according to the custom of that coast, for plunder, were driven off. Now I must say, that if a magistrate was aware that such a barbarous custom prevailed in his neighbourhood, it must have occurred to him that his presence was requisite on such an occasion. The presence, the eye, the voice of a magistrate avail much. It does not, however, appear either that he attended, or that he was prevented by unavoidable accidents from attending. As he did not attend, I think there was reason enough to fear that those fifteen men might conform to the barbarous lex loci, enforced as it was by a multitude of two hundred persons, and that they might think much more of the plunder they could take, than of the oath which they had taken. However it does turn out, by great good luck, that these fifteen men put to flight the two hundred. I own I see more good fortune in the event, than prudence in the measure that was pursued. Upon the whole, commending this magistrate for what he did, but thinking that he might perhaps have done more, I am not authorised to pronounce that he is a salvor in this case, nor entitled to any share of the salvage, 12,000*l.*"

The knotty point whether a female sailor had a right to earn wages in such capacity, was thus playfully solved: "The work has been done, and well done: it is too late to object surely to the payment of the wages on the ground of the sex of the person employed in performing them. The witnesses speak to exhibitions both of skill and strength in her serving her due time at the helm, and in lending her hands, which were sufficiently robust, at the pulling of ropes upon deck. There is no limit to the achievements of women. The name of Joan of Arc will long live to the glory of her country, and to the shame of our own. Queen Elizabeth was captain-

general of the realm. The Co tess of Dorset, Pembroke, and Montgomery, in the time of Charles I., filled the office of hereditary high-sheriff of Westmoreland; as such she was authorised to raise the posse comitatus; she did actually sit on the bench at the assizes, and is even said to have personally attended at the execution of the last process of the law."

Two exceptions occurred, however, in both courts, to this class of petty cases, before the close of Lord Stowell's judicial career, which prove that "e'en in their ashes liv'd the wonted fires." With an extract from these judgments we shall conclude our specimens. The first was a suit brought by a parishioner of St. Andrew's, Holborn, against the church-wardens, for obstructing the interment of his wife. The body had been deposited in an iron coffin, and the church-wardens refused to permit the interment, on the plea that the burial-grounds would be soon filled with iron coffins (Dr. Phillimore's Rep. vol. iii. p. 346.). Lord Stowell took an elab ate review of the grounds for such refusal, enforced with pathetic eloquence the perishable nature of mortality, and entered into a luminous and interesting history of the different modes of burial.

"It has been argued that the ground once given to the body is appropriated to it for ever, — it is literally in mortmain unalienably, — it is not only the *domus ultima*, but the *domus æterna* of that tenant who is never to be disturbed; be his condition what it may, the introduction of another body into that lodgment at any time, however distant, is an unwarrantable intrusion. If these positions be true, it certainly follows that the question of comparative duration sinks into utter insignificance.

"In support of them it seems to be assumed, that the tenant himself is imperishable; for surely, there can be no inextinguishable title, no perpetuity of possession belonging to a subject which itself is perishable! But the fact is, that 'man' and 'for ever' are terms quite incompatible in any state of his existence, dead or living, in this world. The time must come when *ipsæ periere ruinæ*, when the posthumous remains must mingle with, and compose part of, that soil in which they have been deposited. Precious embalments

and costly monuments may preserve, for a long time, the remains of those who have filled the more commanding stations of human life; but the common lot of mankind furnishes no such means of conservation. With reference to them, the *domus æterna* is a mere flourish of rhetoric; the process of nature will speedily resolve them into an intimate mixture with their kindred dust; and their dust will help to furnish a place of repose for other occupants in succession.

"It may not be totally useless or foreign to remark briefly that the most ancient methods of disposing of the remains of the dead, recorded by history, are by burial or by burning, of which the former appears the most ancient. Many proofs of this occur in the Sacred History of the Patriarchal ages, in which places of sepulture appear to have been objects of anxious acquirement, and the use of them is distinctly and repeatedly recorded. The example of the Divine Founder of our religion in the immediate disposal of his own person and those of his followers has confirmed the indulgence of that natural feeling which appears to prevail against the instant and entire dispersion of the body by fire; and has very generally established sepulture in the customary practice of Christian nations. Sir Thomas Browne, in his 'Treatise on Urn Burial,' thus expresses himself (it is his quaint, but energetic manner): 'Men have been fantastical in the singular contrivances of their corporeal dissolution, but the soberest nations have rested in two ways of simple inhumation and burning. That interment is of the older date, the examples of Abraham and the Patriarchs are sufficient to illustrate. But Christians abhorred the way of obsequies by burning; and, though they stuck not to give their bodies to be burnt in their lives, detested that mode after death; affecting rather a depositure than absumption, and properly submitting unto the sentence of God, to return not unto ashes, but unto dust again.' But burning was not fully disused till Christianity was fully established, which gave the final extinction to the sepulchral bonfires. The mode of depositing in the earth has, however, itself varied in the practice of nations. 'Mihi quidem,' says Cicero, 'antiquissimum sepulturæ genus id videtur fuisse, quo apud

Xenophontem Cyrus utitur." That great man is made by that author to say, in his celebrated dying speech, that he desired to be buried neither in gold, nor in silver, nor in any thing else, but to be immediately returned to the earth. 'What,' says he, 'can be more blessed than to mix at once with that which produces and nourishes every thing excellent and beneficial to mankind.' There certainly, however, occurs very ancient mention (indeed the passage itself rather insinuates it indirectly) of sepulchral chests, or what we call coffins, in which the bodies, being enclosed, were deposited, so as not to come into immediate contact with the earth. It is recorded specially of the Patriarch Joseph, that when dead he was put into a coffin, and embalmed; both of them perhaps marks of distinction to a person who had acquired other great and merited honours in that country. It is thought to be strongly intimated by several passages in the Sacred History, both Old and New, that the use of coffins, in our sense of the word, was made by the Jews. It is an opinion that they were not in the use of the two polished nations of antiquity. It is some proof that they were not, that there is hardly perhaps in either of them a word exactly synonymous to the word coffin; the words in the Grecian language usually adduced referring to the feretrum, or bier, on which the body was conveyed, rather than to a chest in which it was enclosed and deposited, and the Roman terms are either of the like signification, or are mere general words, chests or repositories for any purposes, arca and arculus, without any funereal meaning, and without any final destination of these depositions in the earth. The practice of sepulture has also varied with respect to the places where it has been performed. In ancient times caves were in high request; mere private gardens, or other demesnes of the families, enclosing spaces out of the walls of towns, or by sides of roads: and finally, in Christian countries, churches and churchyards, where the deceased could receive the pious wishes of the faithful who resorted thither in the various calls of public worship. In our own country, the practice of burying in churches is said to be anterior to that of burying in what are now called churchyards, but was reserved for persons of pre-eminent

sanctity of life; — men of less memorable merit were buried in enclosed places, not connected with the sacred edifices themselves. But a constitution imported from Rome, by Archbishop Cuthbert, in 750, took place at that time, and churches were surrounded by churchyards. In what way the mortal remains are to be conveyed to their last abode and there deposited, I do not find any positive rule of law or of religion that prescribes. The authority under which they exist is to be found in our manners rather than in our laws. They have their origin in sentiments and suggestions of public decency and private respect: they are to be ratified by common usage and consent, and being attached to subjects of the gravest and most impressive kind, remain unaffected by private caprice and fancy, amidst all the giddy revolutions that are perpetually varying the modes and fashions that belong to lighter circumstances in human life. That a body should be carried in a state of naked exposure would be a real offence to the living, as well as an apparent indignity to the dead. Some coverings have been deemed necessary in all civilized and Christian countries; but chests containing the bodies, and descending into the grave along with them, and there remaining in decay, do not plead the same degree of necessity and the same universal use. There is an instance of an European sovereign making an attempt to abolish the use of sepulchral chests in his Italian dominions, but frustrated by the natural feelings of a highly polished people. In our country the use of coffins is extremely ancient. They are found of great apparent antiquity of various forms and various materials — of wood, of stone, of metals, of marble, and even of glass."

After citing Gough's Sepulchral Monuments, Lord Stowell continues: "I observe that in the funeral service of the Church of England, there is no mention, and indeed, as I should rather collect, a studied avoidance, of the mention of coffins. In the Treatise of Sir Henry Spelman, 1627, De Sepulturâ, a certain sum is charged for coffined burials, and half the same sum for uncoffined burials. The law to be found in many of our authoritative text writers certainly says that a parishioner has a right to be buried in his own parish

churchyard; but it is not so easy to find the rule in those authorities that gives him the right of burying a large chest, or trunk along with himself. There is a distinction between the abstract right and the policy prompted by natural and very laudable feelings, an indulgence of which feelings very naturally engrafts itself on the original right, so as to appear inseparable from it in countries where the practice of it is habitually indulged. The objection is to the metal of which the coffin is composed, the metal of iron; and I must say that, knowing of no rule of law that prescribes coffins, and certainly none that prescribes coffins of wood exclusively, and knowing that modern and frequent usage admits coffins of lead — a metal of a much more indestructible nature than iron — I find a difficulty in pronouncing that the use of this latter metal is clearly and universally unlawful in the structure of coffins, and that coffins so composed are inadmissible upon any terms whatever. But the difference of duration ought to make a difference in the terms of admission. The whole environs of this metropolis would otherwise be surrounded by a circumvallation of churchyards perpetually enlarging."

Lord Stowell having directed the parish to exhibit a fresh table of burial fees for the consideration of the ordinary, subsequently signed it, fixing the sum of admission for iron coffins at 10*l.*

The other case excited very general attention, and startled the public mind (if we may venture on a phrase which the venerable Judge held in especial abhorrence), from the unexpectedness of the decision. It was the case of a slave named Grace, who had attended her mistress to England, and returned with her to Antigua. After taking a review of the judgments passed during the last century by his predecessors and other Judges, the chief of whom was Lord Mansfield, he decided in opposition to the opinion of that great man, that a slave, though he becomes free on landing in England, ceases to be so when he shall have returned to the colony from which he was brought.

"Lord Talbot and Mr. Yorke gave it as their opinion that a slave coming from the West Indies, either with or

without his master, to Great Britain, doth not thereby become free, and that his master's property in him is not thereby determined or varied, and were also of opinion that his master might legally compel him to return to the plantations. Lord Mansfield was compelled, after a delay of three terms, to reverse this judgment, establishing that the owners of slaves had no authority or control over them in England, nor was there any power of sending them back to the colonies. This occurs only twenty-two years after a decision of great authority had been delivered by lawyers of the greatest ability in this country approving a system confirmed by a practice, which had continued without exception ever since the institution of slavery in the colonies, and been supported by the general practice of the nation and the public establishment of its government, and, it seems, without any apparent opposition on the part of the public. The suddenness of this conversion almost puts me in mind of what is mentioned by an eminent author on a very different occasion in the Roman history: 'Ad primum nuntium cladis Pompeiani populus Romanus repentè fit alius.' Lord Mansfield says, 'Slavery is so odious that it cannot be established without positive law.' Far from me be the presumption of questioning any obiter dictum that fell from that great man on that occasion; but I trust I do not depart from the modesty that belongs to my situation, and, I hope, to my character, when I observe that ancient custom is generally recognised as a just foundation of all law — that villainage of both kinds, which is said by some to be the prototype of slavery, had no other origin than ancient custom; that a great part of the common law itself, in all its relations, has little other foundation than the same custom, and that the practice of slavery, as it exists in Antigua and several other of our colonies, though regulated by law, has been in many instances founded on a similar authority. Have not innumerable acts passed which regulate the condition of slaves, which tend to consider them as the colonists themselves do, as 'res positæ in commercio,' as goods and chattels, as subject to mortgages, as constituting part of the value of the estate, as liable to be taken in execution for debt — to be publicly sold for such purposes? Has not the

sovereign state established courts of its highest jurisdiction, for the carrying into execution provisions for these purposes? Is it not most certain that this trade of the colonies has been the very favourite trade of this country, and so continues so far as can be judged of encouragement given in various forms — the making of treaties — the institution of companies — the devolution from one company to another — the compulsion of the colonies to accept this traffic and the recognition of it in a great variety of its laws? If it be a sin, it is a sin in which this country has had its full share of the guilt, and ought to bear its proportion of the redemption."

England has since then expiated its offence by the payment of a noble peace-offering, and relieved a large class from the consequences of this memorable judgment. But even had those penal consequences remained in full force, we could not have joined in the general cry of lamentation that the venerable Judge should have left this as one of his last judicial bequests. Justice is the first duty of courts — humanity only the second: and it reflects honour on his firmness that he should have had the magnanimity to refuse to listen to the murmurs of popular applause.

It is a high and convincing testimony to the well-weighed merits of all his judgments, that so very few of them should have been reversed. Strange to say, the principle of the one most approved, is now most contested.

The judgment of the House of Lords in Rex v. Millis, 10 Clarke and Finnelly, 534, displaces an opinion first promulgated by Sir William Scott in Dalrymple v. Dalrymple, and in deference to his great authority adopted by the legal profession in all parts of the island for more than thirty years, that, as regards the constitution of the matrimonial contract, the law of England before Lord Hardwicke's Act was precisely the same as the general continental law before the council of Trent — a theory which must now be regarded as entirely erroneous. This proposition formed the staple of Sir William's whole argument, though on looking again on this splendid, perhaps unrivalled, effort of judicial eloquence, we think some symptoms of misgiving and hesitation are here and there observable.

The three cases of Dalrymple v. Dalrymple, R. v. Millis, and Catherwood v. Caslon, 13 Meeson and Welsby, 261, exhibit as singular an instance of fluctuation in legal opinions as our judicial history has ever witnessed. We find in the second case a doctrine asserted by a judge whom the Lord Chancellor has proclaimed the most learned ecclesiastical lawyer of his age, dividing the leading oracles of the House of Lords, and in the third the Court of Exchequer feeling bound to repudiate it altogether.

In consequence of infirmity of eyes and voice, Lord Stowell found it necessary to devolve on Dr. Dodson, the junior counsel in the cause, the task of reading his judgment on the slave, which he had written out: (Sir Christopher Robinson had been previously in the habit of delivering his decisions). He perceived that the fitting period for retirement had arrived, and in the Christmas vacation, 1828, withdrew from the bench on which he had sat for the long term of thirty years.

Up to this time he had continued to mix in general society. Mackintosh writes of him as the father of the Literary Club, relating traditional anecdotes of the time of Charles the Second — of his being in high spirits and more than usually agreeable. "One of the most interesting exhibitions of this season," he mentions in another passage of his memoirs, "is of Sir Joshua Reynolds' pictures: a gallery of all the talented wits and heroes of the last sixty years. Lady Crewe told me that she and Lord Stowell in walking along saw the walls almost covered with their departed friends." He was now left nearly alone, borne gently down the stream in which so many of his contemporaries had been embayed or sunk. His bark had suffered but little from the gusts of adverse fortune, and the ripplings of the passions. For ease and content he might have been one of the interlocutors in Sir John Barnard's discourse on Old Age, and could still acacknowledge the present of a brother octogenarian with placidity, if not cheerfulness. "Grafton St., January — 26. Lord Stowell is glad to observe that Mr. Cradock's eighty-third year has made little impression on his vivacity, and he trusts it has made as little on his health. Lord S., though a

little younger, feels that time presses more heavily on both, in his own case."

As this pressure continued imperceptibly to increase, and the body began to feel what his spirit would have fain concealed, that life was on the wane, he sought the shelter of the country, entering but rarely into society.

In the following summer of 1828, at the house of Lord Sidmouth, Sir Walter Scott dined in company with the venerable peer, and thus commemorates his power and their decay; "Here I met my old and much esteemed friend Lord Stowell, looking very frail and even comatose. *Quantum mutatus!* He was one of the pleasantest men I ever knew." *

At Early Court, amid the few rural amusements he could yet enjoy, in literary recreations and easy converse, he sought a solace for those latter days in which we are assured, "there is little pleasure." His religion was of that confirmed and cheerful character which "hopeth all things, believeth all things;" and, though the debility of age interfered with his attendance at public worship, he is known to have been constant in his private devotions. He withdrew with dark and sad presages from the political world, for the new custom and the new law were not to his liking, and he stood almost an alien in feeling amid the departures from the national character which daily took place around him. He dreaded the effect of the rapid changes constantly occurring in our domestic relations, and looked forward to the future with a despondency, which age probably deepened. By the advice of his medical attendants, he was induced at this time to alter his diet, and live according to strict rule. Lord Eldon relates that, on sitting down to dinner with his brother for the first time after this enforced change of regimen, he perceived a great alteration in him for the worse. But no sooner had he in compliment to his guest exceeded the prescribed limit, and drunk an extra glass of wine, than all his former energies began to return; genius and gaiety once more beamed in his

* Entry in his Diary for the 24th of May, 1828. — *Lockhart's Life of Sir Walter Scott.*

eyes, anecdote flowed freely from his lips, and never did the chancellor pass an evening with the venerable peer in his best days with greater cause to admire his talents. On a still more recent occasion, when reason's lamp burnt dimly, and he scarcely retained a recollection of familiar objects, on some one chancing to repeat a line of Horace, he immediately took up the passage and recited thirty or forty verses with but a single pause. These, however, were only the sudden and expiring flashes of a mind that a time of life so far exceeding the three-score years and ten could scarcely fail to quench. It would be painful to linger on the two last years of his life, during which the old age of Marlborough overtook him. His memory recurred to the impressions of youth and early manhood, careless of everything that had occurred for the last fifty years. He rarely spoke unless first spoken to, but was capable of understanding questions about his meals or his game, until within a short period of his death. In the dressing of these meals he was very particular, and showed an irritability so natural to age and feebleness, if they were not to his taste. Even in the last stage of decrepitude, his gallantry did not desert him. One day when a female friend had dined with him, and by her agreeable manner of treating the invalid had induced him to eat and enjoy a good dinner, he suddenly took her hand and kissed it with much warmth. Though too weak to rise from the easy chair, his bow was still remarkable for its grace. The lapse of time, which impaired so much, could not efface the gentleness of his manners; it spared his feelings in obscuring his perceptions, and saved him from the grief of mourning over those whom in the course of nature he ought to have preceded. The remark of the poet is beautifully true,

"Our shadows lengthen as the sun goes down."

Happily for him, before the death of the Honorable William Scott, his reason had set. He died without pain or consciousness after a few days' illness, the springs of life being totally exhausted, on the afternoon of Thursday, January 29. 1836. He was interred on the following week, in Son-

ning Church, near Reading, amid the keen regrets of the poor of that town and its neighbourhood, to whom he had been a kind benefactor; his great nephew, Lord Encombe, and the Dean of Norwich, attending as chief mourners.

Lord Stowell's will, which bears date April 30. 1830, was proved by Viscount Sidmouth and W. Chisholm, Esq., two of the executors; Lord Eldon, the third, having renounced probate. The personalty was sworn to be under 230,000*l.* Lady Sidmouth, his only surviving child, took a life interest in the whole property, both real and personal, subject to the legacies, annuities, and debts. The landed estates were then bequeathed to Lord Encombe: and the personal property to the next of kin, the children of Mrs. Foster,— the only daughter of Mr. Henry Scott, his younger brother, who died in 1779, — a favourite niece, with whom the judge was in the habit of daily correspondence, and to Mr. Sanderson, the son of a deceased sister. Annuities of 100*l.* were left to each of the servants. To University and Corpus Christi Colleges, to the Societies of the Middle Temple, and College of Doctors' Commons, he bequeathed 200*l.* each, as a token of remembrance, for they were the chosen spots where the happiness of his life had been concentrated. They are wealthy societies, and stand in no need of munificent bequests, though a larger sum might perhaps have been desiderated sufficient to have established some exhibitions in the nature of the Eldon scholarships. In addition to the personalty Lord Stowell had invested money in land to so large an amount, that his income is computed to have realised at the time of his death nearly 12,000*l.* a year, a very large sum undoubtedly to have been amassed, as the bulk of it was, by professional exertions and his judicial salaries. These 'piping times of peace' afford no such opportunities to the most able or fortunate civilian, and it may be doubted whether any successor can be blest with so many and such frequent occasions of gain. Even if he were, we should not view the accumulation with the jealous displeasure of a Joseph Hume. Great professional exertions, combining rare ability with continuous labour, merit a high remuneration, nor should the excess be weighed too nicely in the goldsmith's balance.

"You charge me eighty sequins," said a Venetian nobleman to a sculptor, "for a bust that cost you only ten days' work." "You forget," replied the artist, "that I have been thirty years learning to make that bust in ten days."

In considering the methods by which such a heap of gold was piled up, we ought not to overlook the economy which the affluent judge observed in his domestic establishment. He was a man of no personal expense, lived well, but without show, and, having had to struggle with difficulties in early life, rated riches at their utmost value. In his anxiety to dispose of his acquisitions to the best advantage and invest them profitably, he sometimes found himself straitened for his daily expenses, "inter circumfluentes opes inops," and was now and then betrayed into unlucky speculations. Of this nature was the purchase of land in the Wolds, in Gloucestershire, during the war, when land could only be bought at an exorbitant price, and the money of course paid a very poor interest. It returned scarcely more than one per cent. He bore the disappointment with great good humour, remarking jocosely to the friends who would have condoled with him, that he got an usurious interest, as but for this purchase his money would have lain at his bankers, who soon afterwards stopped payment. Of his reluctance to dispense, and eagerness to acquire wealth, there have been told the following anecdotes, which are inserted with a preliminary caution, that the incidents occurred towards the close of life when the 'good old gentlemanly vice' of avarice is apt to gain the mastery over the other passions, and that the opulent nobleman would often act the part of a generous friend and a forbearing creditor.

"Lord Stowell had of course many applications on the score of charity; these, we are sorry to say, he was too often in the habit of evading. We use the term evading, because the method of refusing, like the king's 'Le roi s'avisera,' was always so bland and courteous that it scarcely could be termed a refusal. A lady in the country, who had taken a great interest in, and, indeed, partly established at her own expense, some charitable institution in a place where his lordship possessed considerable property, wrote to him soliciting his aid in its favour. He expressed, in answer, the highest admira-

tion of the institution, and spoke of her personal exertions in such flattering terms, that she made no doubt the letter would conclude with a handsome donation. What was her surprise, therefore, on turning over the first page, to read that he never found it more painful than he did in this instance to adhere to the rule he had been under the painful necessity of making — to refuse all applications of this nature!" But the anecdote would be incomplete without the sequel. "The lady, indignant at his lordship's answer, flew with the letter to another gentleman equally well known for possessing the organ of acquisitiveness, and in whose assistance she seemed to have placed equally delusive hopes, and throwing it on the table, 'There,' said she, 'there is the charity of the rich!' The gentlemen appealed to quietly took it up, put on his spectacles, and after reading it gave it back again, adding, by way of consolation, 'Never mind, madam, be indebted to no one, do it all yourself.'"

As a bencher of the Middle Temple Lord Stowell was entitled to a set of chambers, which, not occupying himself, he of course let. The rent of them probably amounted to not more than 70*l.* a year, and as his lordship was usually indebted to the Inn for commons, being in the habit of dining there, it might be supposed he would have allowed the one account to run against the other; but no! regularly on the day after the rent became due did the aged peer present himself at the Treasury of the Middle Temple. "Mr. Phillips," he used to say, addressing the under-treasurer, "my rent became due yesterday, did it not?" On Mr. Phillips answering in the affirmative, he would proceed — "You have heard nothing from —— (mentioning his tenant's name) have you?" "No, my Lord, but —— is an extremely respectable gentleman, and it only became due yesterday," was the general reply. The punctual lawyer was not to be so easily pacified — "Yes, but you'll observe I have not got the money; the money is due, and I have not got it."

There is, also, a story current of him in Newcastle, that, when advanced in age and rank, he visited the school of his boyhood. An old woman whose business was to clean out and keep the key of the school-room, conducted him. She

knew the name and station of the personage whom she accompanied. She naturally expected some recompense—half a crown perhaps—perhaps, since he was so great a man, five shillings. But he lingered over the desks, and asked a thousand questions about the fate of his old school-fellows. And, as he talked, her expectations rose—half a guinea—a guinea—nay, possibly, (since she had been so long connected with the school in which the great man took so deep an interest) some little annuity! He wished her good-bye kindly; called her a good woman, and slipped a piece of money into her hand. It was a sixpence!

Before, however, we form too harsh a judgment of Lord Stowell's penuriousness from such a story as this, we should pause to reflect, that though few of his rank and fortune would, on such an occasion, have given so small a sum, yet the sixpence which the old woman received, in no other way could she have earned so easily. He had considered her station, it was his own that he had forgotten.*

Lord Stowell's early necessities had taught him habits of prudence; and he adopted as well as recommended the maxim, that "decent frugality is the parent of wealth." As he was a very careful, so he became a very rich man. He loved in later life to say that he admired, above all other investments, "the beautiful simplicity of the three per cents." When adding field to field, and purchasing other estates around his own, he observed, with a smile, that "he liked to have plenty of elbow room."

Lord Stowell was in person rather below the middle stature, in his latter days inclined to corpulency, and stooped. His countenance was full of placidity and expression, and his smile very winning. His features were regular and flexible—the brow and nose remarkably handsome. He had been fair and fresh-complexioned in his youth. You could not glance at his face without concluding that he was an amiable, or conjecturing him to be a highly intelligent, man. He looked what he was, a perfect English gentleman, even when seen under the disadvantage of a dress that might appear to have been

* Surtees.

worn too long, and a careless toilet. In politics Lord Stowell was through life an intelligent and uncompromising Tory. "Of every change he was the enemy, of all improvement careless, and even distrustful, of the least deviation from the most beaten track suspicious; of the remotest risks an acute prognosticator as by some natural instinct; of the slightest actual danger a terror-stricken spectator. As he could imagine nothing better than the existing state of any given thing, he could see only peril and hazard in the search for any thing new, and with him it was quite enough to characterise a measure as "a mere novelty" to deter him at once from entertaining it; a phrase, of which Mr. Speaker Abbot, with some humour, once took advantage to say, when asked by his friend what that mass of papers might be, pointing to the huge bundle of the Acts of a single Session—"Mere novelties, Sir William, mere novelties." *

There can be no doubt that his heart went out to meet him, when inditing the following complimentary letter to Burke for his fierce onslaught on the Whigs:

"My dear Sir, Commons, August 6. 1791.

"Give me leave to use an early opportunity of paying the tribute of gratitude for the exquisite satisfaction I have received in the perusal of a late pamphlet (The Appeal from the old to the new Whigs). I beg to assure you that amongst those with whom I converse I have not heard a dissentient voice about the value of the obligation the author of that pamphlet has conferred upon the public. Every man is eager to acknowledge that questions of the utmost importance are treated with a purity as well as justness of thinking, and a beauty of imagination and style that are peculiar to the author of that work. If I can at all trust my own judgment, and what is more, my own attention to what is said in the world, no pamphlet is likely to produce greater unanimity of opinion in favour of its contents; and, though the satisfaction of knowing this is a very inadequate reward, yet I conceive it cannot but be a very acceptable one to the person who, having composed the work upon the gravest considerations of public interest, must be happy to find that the only principles by which that interest can be supported are likely, by the success of his efforts, to take a

* Lord Brougham's Statesmen.

firm root in the conviction and conduct of mankind. I am, my dear Sir, with the most cordial esteem and admiration,

"Your faithful and most obedient servant,

"WILLIAM SCOTT."

As in youth, so in age, the timid judge classed reform with revolution, and deprecated political change as a national calamity.

In his moral deportment Lord Stowell was exemplarily correct, and a man to be loved in all the domestic relations. No one cherished more, or took more delight in, the sweet charities of private life. To his unbounded affection for "Jack Scott" we have already borne imperfect testimony. His manners, the emanations of an amiable and kindly spirit, were attaching in the highest degree. They were at once graceful, courtier-like, and dignified, totally free from pride and affectation, but slightly formal. He had lived in an age of hoops and minuets, when full dress was as much cultivated beyond the verge of a court as in the days of William IV. abolished within it—before the remembrance of Beau Nash and his despotic sway had entirely faded—when the appellations of Sir and Madam in society were as rigidly exacted as they are since dispensed with, and the Sir Charles Grandisons of the day loved to bow low upon their ladies' hands. His gentle and refined nature delighted in the society of accomplished women, to whom he is described to have been peculiarly courteous in his address, speaking in a soft, bland voice, modulated to the nicest harmony. This polished exterior might have been expected to cover a fastidious and effeminate spirit: it was just the reverse. He loved manly sports, and was not above being pleased with the most rude and simple diversions. He gloried in Punch and Judy—their fun stirred his mirth without, as in Goldsmith's case, provoking spleen: he made a boast on one occasion that there was not a puppet-show in London he had not visited, and when turned fourscore was caught watching one at a distance with children of less growth in high glee. He has been known to make a party with Windham to visit Cribb's, and to have attended the Fives Court as a favourite resort. "There were curious characters," he observed, "to be seen at these places." Lord Stowell was above the pedantry which disdains the gratifica-

tion of a mere ordinary and every-day curiosity. No one had more knowledge of the common affairs of life, and it was at all times a current observation that the person who first saw any sight exhibited in London, be it a production of nature or of art, or of artifice, for he would condescend to see even the juggler play his tricks, was Sir William, who could always steal for such relaxation an hour from settling the gravest questions that could be raised on the law of nations. He was the most indefatigable sight-seer in London. Whatever show could be visited for a shilling, or less, was visited by Lord Stowell. In the western end of London there was a room generally let for exhibitions. At the entrance, as it is said, Lord Stowell presented himself eager to see "the green monster serpent," which had lately issued cards of invitation of the public. As he was pulling out his purse to pay for his admission, a sharp, but honest, north-country lad, whose business it was to take the money, recognised him as an old customer, and knowing his name, thus addressed him: "We can't take your shilling, my lord; 'tis the old serpent which you have seen twice before in other colours; but ye shall go in and see her." He entered, saved his money, and enjoyed his third visit to the painted beauty.* This love of "seeing sights" was on another occasion productive of a whimsical incident. A few years ago an animal, called a bonassus, was exhibited some where in the Strand. On Lord Stowell's paying it a second visit, the keeper very courteously told his Lordship that he was welcome to come, gratuitously, as often as he pleased. Within a day or two after this, however, there appeared, under the bills of the exhibition, in conspicuous characters,

"Under the patronage of The Right Hon. Lord Stowell:"—an announcement, of which the noble and learned lord's friends availed themselves, by passing many a joke upon him; all which he took with the greatest good humour. He shared, in common with the leading senators and literary characters of his day, a strong partiality for the drama, which had not then degenerated into mere song and spectacle. He had a good ear for music, and found a solace in listening to

* Sketch by Mr. Surtees.

the piano, when the zest of most other pleasures had passed away.

Thus formed to adorn and enjoy society, it is not surprising that he should have been a *bon-vivant*—a lover of good dinners and good wine. Of good dinners Lord Eldon used to say, "he would answer for it his brother never had fewer than 365 in any one year, but how many more he would not take upon himself to affirm. The refection of the Middle Temple hall he would sometimes take by way of a whet for the eight o'clock banquet. An intimate friend relates, that when the modern fashion of drinking little or no wine after dinner was introduced, brought up as his lordship had been in the old school, it gave him no small disquietude, and those who knew him well and were in the secret, were wont to say it was most amusing to witness the manœuvres to which he had recourse to prevent a general rising from table whenever the final move was proposed, and the decisive question of courtesy put to the guests,—Would they like any more wine? He was then sure to be found telling, or beginning to tell, or about to begin to tell, one of his stories, and as his manner of telling them was well known richly to repay the listener, he could always command a willing audience. The company pulled their chairs close to the table again, all thoughts of a move were forgotten, and the convivial peer had gained his point. But though in such good company as that of his brother and Sir William Grant, he would, according to the royal pun, *comport* himself well, and did not like to be restricted for his share to a single bottle of port, they would do his memory great injustice who should suspect from these anecdotes that he was betrayed into convivial excess. He was born before the introduction of Temperance Societies, and the fellow of the common room, the president of the benchers' table, the veteran clubbist, would make no rash vows of abstinence from the Portugal grape, but he respected his character and station in society too much to become intemperate in his cups, or take more wine than sufficed to cheer, but not inebriate, to strengthen, instead of injuring, his constitution. His conversational powers are admitted to have been of the highest order; there never ruled the feast a better *rex bibendi*,—

crowned with gaiety and good humour, — always ready to contribute his portion to the general stock of information and amusement, without exacting too large a space in turn of the company's attention or time.

"To illustrate," says Lord Brougham, "by examples, his singularly refined and pungent wit in conversation, or the happy and the unexpected quotations with which he embellished it without for an instant fatiguing his audience, would be far less easy, — because it is of the refined essence in which the spirit of the best society consists not to keep. When some sudden and somewhat violent changes of opinion were imputed to a learned judge who was always jocosely termed Mrs. ——, '*Varium* and *mutabile semper fœmina*,' was Sir William Scott's remark. A vicar was once (said the Judge presiding at the dinner of the Admiralty Session) so wearied out with his parish clerk confining himself entirely to the 100th Psalm, that he remonstrated and insisted on a variety, which the man promised; but confirmed habit proving too strong for him, the words of the old hundredth were as usual given out next Sunday, 'All people that on earth do dwell;' upon this the vicar's temper could hold out no longer, and jutting his head over the desk he cried, 'D—n all people that on earth do dwell,'—a very compendious form of anathema, added the learned chief of the Spiritual Court."

"For table-talk," adds Mr. Surtees, "Lord Stowell had a high reputation. At dinner, when surrounded by an 'audience, few but meet,' he was one of the most agreeable of men. His mind was remarkable for its quickness; and hence he was capable of giving sudden and very pleasing turns to conversation. His humour was dry; his language was terse; he would say much in few words. His memory, enriched with the spoil of all ages, was tenacious and ready. At times, therefore, he would exhibit rich stores of learning; and in a very agreeable way would unexpectedly throw historical illustrations on the subject of discourse. His classical quotations, often humourously applied, were always effective. He was a frequent and honoured guest at the table of Dr. Howley, both when Bishop of London and Archbishop of Canterbury; and here, whether in the polite or profound

scholarship of the divine — himself also at one time an Oxford Fellow and a tutor, — he would feel the inspiration of kindred sympathies. But, to a lawyer, the greatest of all conversational treats was to meet Lord Eldon and Lord Stowell together in a friendly dinner-party of lawyers. Here, sure of deference and appreciation, each brother would playfully unbend after the labours of the day; talk one against the other; and narrate, alternately, professional anecdotes. In playful banter they would not spare each other. A neighbour having asked Lord Stowell aside, the conversation being on feats of sportmanship, if his brother killed much: 'Nothing,' he quietly answered, 'he kills nothing but time.' The maligned sportsman had his revenge. When asked whether Lord Stowell took much exercise. 'None,' he said, 'but the exercise of eating and drinking.'

"On another occasion, a remark being hazarded, that Lord Stowell seemed more abstemious at his own table than at a friend's, the chancellor remarked archly, 'He will take any *given* quantity of wine!'"

Meeting Sir Henry Halford in society, Lord Stowell took occasion to ask a question respecting the management of his own health. Sir Henry, knowing his man, and thinking the question would (to use a lawyer's phrase) carry a fee, made, with *malice prepense*, the resolution to evade it, and therefore answered, "A man's health is generally in his own keeping: you know the old saying, that at forty every man is either a fool or a physician." "May he not be both, Sir Henry?" replied Lord Stowell, with a quiet smile.

The best definition Boswell could obtain of taste, after asking all the literary men of the day, was one given him by Lord Stowell,—"That faculty of the mind which leads a Scotchman to prefer England to his own country."

One day, when some one objected to the practice of having dinners for parish or public purposes; "Sir," said Lord Stowell, "I approve of the dining system; it puts people in good humour, and makes them agree, when they otherwise might not: a dinner *lubricates* business."

The following is an instance how felicitous his manner of telling good things must have been. He related the history

of his misadventures in fishing. Being emulous of the fame of Isaac Walton, he had accompanied Lord Grosvenor to one of his country seats that was close to streams, the luxury of anglers. He bargained to be left alone, and have his hook properly baited. He remained stationary at the brink till the first dinner bell. — "Well! what have you brought?" was the inquiry. "The fishing rod," was his quiet answer. "But where are the fish?" "In the pond, as they were not put out of their way in the least." In print the anecdote appears *fâde* and pointless, but it delighted the company, for they were charmed with the manner, the look, the voice, the play of feature, the italics of pleasantry which cannot be written down. The reported jest is in general no more than the empty mask and robe of the masquerade. Lord Stowell had not established a name in society by sudden *bon mots**, or unexpected repartees, or lively sallies, but by qualities which diffuse more pleasure, though less susceptible of delineation, — the easy flow of narrative, the sly humour, the apposite illustration, the *naïve* story, and, what Englishmen appreciate so highly because they understand so well, the constant tone of a gentleman.

The varied life of Lord Stowell may be divided into three epochs, each of them marked by characters of peculiar excellence and fraught with tokens of distinction. The first eighteen years were spent in classical pursuits at Oxford, in training the intellect of the aristocracy, in making philosophy teach by examples from the historian's chair. During the next fifteen years we trace through all the literary circles of London the "Dr. Scott of the Commons," the friend of Reynolds and Burke and Malone, the favourite of the Turk's Head Club, the oracle of the Consistory Court, delivering discourses on the regulation of the domestic forum, which Addison would have loved for their elegance and Johnson for their morality. In the next thirty years we behold him in the Admiralty chair

* He would sometimes make a sharp retort. When a late celebrated duchess bantered the Consistory Judge, and inquired, "How his Court would manage if he himself should be guilty of a faux-pas," he answered, with a gallantry becoming the question, "that the idea of such an embarrassing situation had only occurred to him since he had become acquainted with her Grace."

forming a system of national law from the ill-fashioned labours of his predecessors, erecting a temple of jurisprudence, and laying its foundations not on fleeting policy or in occasional interests, but in universal and immutable justice.

His name has vanished from the peerage; he has left no son to transmit his honours. He had outlived his generation, and the candidates for noisy notoriety concealed the retiring veteran from the stage. He has sunk into the grave, not unwept, indeed, nor unhonoured, nor unsung, but with a less vivid expression of regret than if he had not exceeded the common span of human life. This is the natural penalty which extreme old age must be content to pay, and it would be idle to complain of it. But he has left a name which the proudest transmitter of hereditary rank might envy. The name of Scott, the title of Lord Stowell, can never be forgotten. — "Quidquid amavimus — quidquid mirati sumus, manet mansurumque est in animis." The honours he has won will be co-existent with the language, and require not for their preservation the blazoning of the Herald's Office. The piety of kinsmen has marked his head-stone: in the chapel of University College there was a vacant place near the statue of Sir William Jones, which the gratitude of relatives has filled with his name. But beyond the testimonies to departed worth of pious relatives and affectionate friends, there is a national tribute due from his country, which, for the sake of rising talent, and of those who shall come after, we hope to see at length bestowed. National wealth is never more profitably invested than in recompensing national virtue, and they are little appreciant of human sympathies who undervalue the honours of the tomb. In his cathedral church, where a splendid cenotaph has been erected to the memory of Cuthbert, Lord Collingwood, the like memorial should not be wanting to the merit of the great and good man who raised the character of our country for justice to the same height to which his schoolfellow had exalted it by his valour; nor will that country escape the imputation of ingratitude to her most distinguished jurist, should St. Paul's be defrauded of his monument.

Note. — The following is the beautiful Latin inscription which Lord Stowell wrote for the monument of his old tutor, the Rev. Mr. Moises, and which proves that he could have easily capped Latin epitaphs with Dr. Parr.

We have omitted the formal parts.

Juxta requiescit
Reverendus HUGO MOISES, A.M.
Collegii Divi Petri apud Cantabrigienses
olim socius.
Postea, per longam annorum seriem,
Verbi divini prælector.
Vir erat ingenio eleganti et exculto.
Literis humanioribus apprime ornatus,
Et in his impertiendis
Indefessus ac felix.
In regendis puerorum animis
Leni usus imperio sed constanti.
Moribus facillimis nec inficetis,
Sed ad vitæ et officii sui sanctimoniam
rite compositis:
Omnium, quorum studiis dirigendis
Invigilaverat,
Commodis in omni genere promovendis
Amicissime semper, sæpe utiliter intentus.
Religionis patriæ institutis stabilitæ
Cultor observantissimus;
Et in concionibus sacris
Explicator diligens, doctus, disertus.

CHAPTER VIII.

THE LIFE OF LORD ELDON.

"GREAT, good, and just," the commencing words of Montrose's beautiful eulogy on his sovereign, are the very epithets due of special right to the subject of this memoir. The son of a fitter, a small dealer in shipping coals, he filled, for a quarter of a century, the highest place of trust and power that can be filled by a subject; acting as public prosecutor in times of anger and faction, he had no private enemy; presiding for twenty years in the highest court of judicature, one only of his numerous and momentous judgments, involving millions of property, has been reversed! I rejoice to know that the memorable life of such a man, worthy to rank with Somers and Hardwicke, has been presented to the nation, whose inheritance it is, by one fully competent, and furnished with all appliances, to illustrate his character and recommend his example. But as eminent personages often sit to different artists for their likeness, that the favourite image may be seen under various aspects, — "another, yet the same;" as accumulated resemblances of the well-known countenance are often not unpleasing, and as this miniature was the first executed, however imperfectly, I shall proceed to finish a faithful and independent sketch, and complete this Gallery of Legal Worthies with the portrait of the righteous judge who would not have wished the tints to be too warmly coloured, nor disliked the picture because it had some shade. Unless the chronicler, free from malice as "honest Griffith," were permitted to discuss with freedom the merits and demerits of departed statesmen, and "nothing extenuate," biography would be as complaisant as a court calendar, but at the same time as wearisome.

John Scott (Lord Eldon) was born in his father's house in

Love Lane, Newcastle, June 4. 1751, a memorable anniversary in our national annals as the birth-day of the good old King George III. His kind master ascribed additional value to it from the circumstance of this coincidence. "Do not congratulate me," he said to his faithful Chancellor, "till I have paid my respects to you on this happy day."

Mr. William Scott is described to have been a worthy, pains-taking man, but not remarkable above others in his calling. Mrs. Scott (talent is generally inherited from the mother) was distinguished for her shrewdness. A proud and happy mother, she just lived long enough to learn that her youngest and favourite son was ennobled, and then died in peace. Both William and John were fine-looking, clever lads; in high favour with their master, from their quickness of apprehension and strength of memory. John was the younger by six years, and of a less joyous temperament than his elder brother, but generally beloved for his kind and gentle disposition. He was well grounded in the classics for slender cost, as the son of a freeman, at that most valuable institution, the Newcastle Grammar School; of which the liberal and able head master, the Rev. Mr. Moises, survived to witness the splendid effects, and but for his native modesty and aversion to change, might have secured high preferment from a justly grateful pupil. The Chancellor had held the seals but a day or two before he gladdened the heart of his old preceptor by appointing him one of his chaplains. Lord Eldon's own sense of his obligations is expressed with much feeling in the following letter, written to the Rev. J. Brewster, of Egglescliff, in Durham, to acknowledge the copy of a Memoir which he had privately printed of that worthy man.

"Dear Sir,

"Pardon me if my engagements have made me too dilatory in acknowledging your kindness in sending me your Memoir of the late Master of the Grammar School in which we were both educated. It has highly gratified me to find that the public are in possession of such a record of that excellent person's merits and worth. I feel the obligation I owe you for the mention of my name in that work. Throughout a long life, in which it has pleased

God to confer upon me many blessings, I have always deemed it one of the most valuable that I had in the earliest period of my life the benefit of being educated under Mr. Moises.

"I am, Sir, your obliged servant,

"ELDON.

"Lincoln's Inn Hall,
"Wednesday, Aug. 20. 1825."

At the early age of fifteen, John Scott took his seat for Oxford, in the old and heavy Newcastle coach, that still affected some pretensions to dignity, with its ancient armorial bearings, and well-known motto, "Sat cito si sat bene." He was matriculated a Commoner of University College on the 15th May, 1766. He had the advantage of his elder brother's public and private tuition, who used afterwards to say, "I was quite ashamed of his appearance; he looked such a mere boy:" and became so early and so ripe a scholar, that on July 11th, 1767, University College did itself honour by electing him a Fellow. In February, 1770, he took his B. A. degree, one of the most celebrated boy bachelors since the days of Cardinal Wolsey; and in the following year gained the single chaplet of distinction with which Alma Mater then permitted her studious sons to wreathe their brows — the Chancellor's prize of twenty guineas for an English essay "On the Advantages and Disadvantages of Foreign Travel;" a good but difficult subject for a body of youths, who must draw from books alone any acquaintance with the proposed subject of discussion.

We shall give some extracts from this ingenious little treatise, as it is rarely to be met with, and bears the impress of character with its well-chosen and appropriate motto, "Non alibi sis sed alius." The balancing and cautious wisdom of the young theorist, who had not then strayed, nor was ever destined to stray, from his native shores, is thus fully and pleasingly developed:—

"There are few principles of action which have been more immediately beneficial to society, and which, therefore, merit more assiduous cultivation, than the love of our country. But whilst we have been studious to regard our parent with the tenderness of filial affection, we have imbibed the weak pre-

judices of children, and, like the undiscerning lover, have fondly gazed without discrimination upon her beauties and her deformities.

"He who overrates his own merits, will probably undervalue the deserts of others. From this arrogant conceit of our worth, as a people, has sprung that uncharitable opinion which confines excellence to the boundaries of a small island, and, with the true spirit of ancient Greece and Italy, has adjudged every other people to be comparatively barbarous. This illiberal idea, it is confessed, has been attended with salutary consequences: it has aroused the soul of the warrior, and by teaching the brave defenders of our country to despise, it has taught them to conquer, her enemies.

"But it may be discovered without any extraordinary acuteness of reasoning, that this opinion, which has been ratified by popular assent, because it indulged our national pride, has found its chief support in the confidence of those who embrace it. We are indebted to foreign ingenuity for the first essays in the art of elegance; and whilst we are justly celebrated for our improvements of imported discoveries, we must acknowledge the unfruitfulness of English invention. He who examines the origin of our political government, the favourite theme of our justest commendations, will find that this beautiful system was invented in the woods of a foreign country: —

"'Ce beau système a été trouvé dans les bois.' — MONTESQUIEU.

"The acquisition of foreign languages, which has usually been pleaded to countenance the custom of travel, cannot with justice be denied to possess singular utility. But, whilst we would recommend this study, we cannot but disapprove of that ill-directed labour, which, with little regard to the import of expressions, is employed in attempts to acquire the niceties of foreign pronunciation. This censure, however, must not be extended to the traveller, who, proposing to himself the conversation of eminent men abroad, as a principal object of his undertaking, must endeavour to adorn his discourse with all the graces of utterance. Broken language will render his

inquiries really obscure, and seemingly impertinent. And, as the accuracies of foreign diction can only be taught in a foreign country, we are furnished with another proof of the utility of travel.

"Amidst a variety of objects, which will challenge the attention of the traveller, few will prove more copious sources of delight, or supply him with ampler matter for useful reflection, than those awful monuments of ancient industry, and power, which seem to have been hitherto preserved as memorials of a destructive luxury, the havoc of which was felt when the shocks of time were yet imperceptible. How must the British statesman feel for his country, when he surveys the venerable ruins of a senate which stood secure till gold was accepted as an equivalent for freedom, and the Roman legislature, softened by pleasure, embraced the shackles of slavery? Whilst the eye is ravished, the mind cannot be unemployed, but recurs to the virtues which established, and the vices which overthrew, the grandeur it surveys.

"When we consider the profuse rewards bestowed upon foreign artists by those who pretend to a more refined taste, we may recommend travel to our countrymen as a means of improvement in those performances, which derive their excellence from the delicacy of manual execution. The painter must view pictures, and the sculptor must copy statues. If Italy is confessedly the seat of the fine arts, when we have sought instruction from her, we may aspire to hope that the time will come when English ingenuity, as well as foreign skill, shall be loaded with the rewards of English liberality.

"These are some of the advantages which may accrue from travel, when the understanding has been previously fraught with useful knowledge, and the judgment is mature; those which are generally enumerated to enforce the necessity of early travel, prove it to be the real source of all those fatal miscarriages, which have induced the more serious part of mankind to give a total discountenance to the practice. Considered in a political view, it is pregnant with mischief. He who reflects that the laws and manners ought mutually to

operate on each other, can never approve a scheme of education which forms the manners without relation to the laws. Fashionable as it may be to complain of the roughness of British demeanour, the wary politician would use the file with caution, and leave those manners coarse which, by attempting to polish, he might weaken or impair. Where the constitution calls upon every man to assert his own independence, and has appointed each the guardian of his own freedom, few have leisure or inclination to pursue those refinements which necessarily engage the attention of a more enslaved people. He who has not a single right to protect, may endeavour to render his servitude supportable by studying the arts of politeness, but let not the Briton be taught to leave his distinguishing privilege — his liberty — without defence, whilst he affects these elegant improvements.

"Some, influenced by reflections drawn from the ductility of youth, have recommended early travel for the more easy removal of national prejudices, not yet grown obstinate by duration. But perhaps experience has uniformly proved, that by an early expulsion of prepossessions in favour of our own country, we form an opening for the admission of opinions detrimental to it, — that our prejudices are rather exchanged than destroyed. To this only can we attribute a prevailing passion for foreign productions, which, as it deprives our own artists of the rewards their industry claims, and withholds from our manufacturer every encouragement which can animate his labours, must at length exclude all expectation of domestic improvement. Serious as these evils are, they are not the most dreadful consequences of early travel. Introduced into a depraved world when his reason is yet too feeble to countenance the workings of his passions, the young traveller lies open to seduction, is deceived by every fashionable error, and misled by every delusive example. He probably returns to his own country a compound of ignorance and infidelity, with little to atone for laxity of principle but the fopperies of a trifling and superficial elegance. If there be a people among whom this practice has generally prevailed, we shall find them generally cor-

rupted. Perhaps the frequency of it among ourselves may account for the alarming depravity of our manners, which every man sees and laments.

"Where, then, shall we seek a remedy? Must it not be in that education which watches over the morals with the strictest vigilance, and, by fortifying the mind with the soundest principles of religion, enables it to pursue with safety those inferior accomplishments, whose only merit is to heighten the beauty of virtue, and which become truly dangerous when they soften the deformities of vice!"

To his triumph in the Sheldon theatre Lord Eldon would often revert with honest pride and pleasure, and dilate on the encouragement it afforded him in his future exertions. Sixty years later he was reminded by the Bishop of Clonfert of his shyness and modesty in the theatre. "I," said the Bishop, "recited my prize poem first, and when I came out, you hesitated so much about going in, that I actually had to take you by the shoulders and push you in." That these honours form no very insufficient test of merit, is evidenced by the circumstance that three other judges in his lifetime should have gained similar distinctions — Lord Tenterden, Mr. Justice Taunton, and Mr. Justice Coleridge. The first, in addition to the English essay "On the Use and Abuse of Satire," carried off the prize for an elegant Latin poem; and the last, besides the Latin prize poem and also the two prize essays which were awarded in the same year, had the singular and unexampled honour not merely of a first class in classics, but of standing alone in that class. At Cambridge, where the studies are still more especially adapted to a legal career, the Tripos paper demonstrates how worthily the university honours were bestowed, and how well followed up. The love for classical literature and science, which the studies thus fostered tend to inspire, is another lasting benefit. Lord Tenterden would refresh his wearied spirits after a hard day in Court with the composition of Latin verses, generally Alcaics or Sapphics, on some botanical subject. Lord Eldon rarely indulged in classical allusions, probably thinking them misplaced in grave matters of equity, and rather astonished his

Court in Lord Byron's case by declaring that he had in the course of the last long vacation — "inter sollicitæ jucunda oblivia vitæ" — read the Paradise Lost from beginning to end. Yet with him the love of classical studies was suppressed for a time, not extinguished. On his retirement he resumed the reading of the Latin Poets, and often amused himself by marking with a pencil some favourite line from Horace or Virgil applicable to the surrounding scenery, when wheeled about his grounds. The old man, in the last few tranquil years of life, felt a placid delight in resuming the studies of his youth, to which period we must now, after this digression, reconduct him.

Young Scott descended from the rostrum, with the plaudits of 'troops of friends' ringing in his ears, and the conviction at his heart that the distinction he had won was only an earnest of future triumphs. It emboldened him to take a rash step, which was deemed ruinous at the time, and wholly subversive of his bright hopes and prospects — a runaway marriage. He had long exchanged vows of affection with a lovely girl at Newcastle, Elizabeth, the eldest daughter of Aubone Surtees, Esq., a banker of that town; called by the Duchess of Northumberland her Newcastle beauty: and, failing to obtain the consent of her friends to the union, he hastened down in the first flush and glow of success to persuade an elopement. "See what Jack Scott has done!" was the joyful exclamation of his old master, as he entered the school-room with a glistening eye, and the open letter in his hand, announcing that his favourite pupil had obtained the university prize. "Jack Scott has run off with Bessy Surtees, and the poor lad is undone," was his sad augury, when the news of the flight to Scotland (the youth was only twenty, and the object of his affection eighteen) shortly followed. His nearest relatives joined in the same fearful forebodings. "I suppose," said Mr. William Scott to an Oxford friend, when the intelligence first transpired, "that you have heard of this very foolish act of my very foolish brother." His friend answered that he certainly had; and added, "but I hope that it will turn out better than you anticipate." "Never, Sir," replied Mr. Scott,

"he is completely ruined; nor can any thing now save him from beggary." "You do not know," continued his brother, "how very unhappy this makes me; for I had good hopes of him till this last confounded step has destroyed all." The heart of youth is sometimes wiser than the head of age. So far from destroying, this very step completed and perfected all. How little do we know the ways of Providence to man! The road to ruin, as all his kinsmen deemed it, though strait and rugged at the first approach, soon widened into a smooth and primrose path, and led directly on to fortune.

Mr. Scott carried off his "bonny bride" from one of the upper windows of her father's house in the Sand-hill, Newcastle. The marriage was not solemnized by the blacksmith at Gretna Green, as commonly reported, but by a minister of the Scottish church, the Rev. J. Buchanan, at Blackshiels, North Britain. Miss Surtees had the advantage of a beautiful face, and a figure, which continued even to an advanced age uncommonly good. When an old woman, she was accustomed in the morning to wear a sort of habit, and her own hair dressed with powder, and when her back was turned to a stranger, from her slender person and light step he might have mistaken her for a girl. But the qualities of the heart surpassed even her personal attractions. She would sit up with her husband during his midnight studies, watching him with silent affection, and moving about on tip-toe that she might not disturb the connection of his thoughts. It was probably the recollection of this period, that gave the faithful wife so strong a hold on the affections of her husband in advanced life. For several years after marriage, their mode of living was necessarily very retired, and she then contracted an indisposition to society, which was never laid aside. After the clandestine match of Lady Elizabeth Repton, Lord Eldon's eldest daughter, one of his connections told the Chancellor that he really ought to force Lady Eldon into society, in order to chaperon the remaining daughter; he replied, "When she was young and beautiful, she gave up every thing for me. What she is, I have made her, and I cannot now bring myself to compel her inclinations. Our marriage prevented her mixing with society when it might have afforded pleasure; it

appears to give pain now, and why should I interpose?" A gossiping and censorious world has made itself busy with her habits of thrift; and few in society but must have heard some amusing anecdotes of this disposition, exaggerated doubtless for effect, yet having some foundation in truth. The state of Mr. Scott's finances compelled a rigid system of economy in the first years of their union, and the habit became too inveterate to be wholly overcome, when it might have been gracefully discarded. But this enduring infirmity, which the necessities of her husband had engrafted on a better nature, evinced the depth of conjugal love, and appears to have passed unnoticed and unrebuked, liberal as he is proved to have been. It is said that a difference of soil and climate will change the precious herb into a weed; and we may attribute to a sudden alteration in circumstances the excess of this unseemly habit. To further censure that excellent wife and mother is not even in the judgment of the censorious amenable. About three years before his death, when an old north-country friend came over to see him at Rushyford, Lord Eldon observed to him, "I know my fellow-townsmen at Newcastle complain of my never coming to see them, but how can I pass that bridge?" It was the bridge that looked upon the Sand-hill. The eyes of the old man filled with tears, as he mused upon the memory of the dead, and he exclaimed, after a pause, "Poor Bessie! if ever there was an angel upon earth, she was one!" He then alluded to his own career, and observed, "The only reparation which one man can make to another for running away with his daughter is to be exemplary in his conduct."

How much the partner of his fortunes contributed to their advancement was gracefully alluded to by the late King George III., on a very interesting occasion. "Lord Eldon," says Mr. Wilberforce, in his Diary lately published, "had just received the Great Seal, and I expressed my fears that they were bringing the king too soon into public after his late indisposition: 'You shall judge for yourself,' he answered, 'from what passed between us, when I kissed hands on my appointment. The king had been conversing with me, and when I was about to retire, he said, 'Give my remembrances

to Lady Eldon.' I acknowledged his condescension, and intimated that I was ignorant of Lady Eldon's claims to such a notice. 'Yes, yes,' he answered, 'I know that you would have made yourself a country curate, and that she has made you my Lord Chancellor.'" When in the company of those whom she valued, her address was sprightly and agreeable, and on some occasion, perhaps the only one, when she presented herself at Court, Queen Charlotte passed high encomiums on the graceful manners of the fair recluse. But when it is recollected that a husband and a son, the one in his will, the other on his death-bed, desired to be buried close beside her, it will be at once admitted that she must, in spite of some unfortunate eccentricities, have possessed attractions more sterling than those that are comprised in person and face and manner.*

The rumour generally circulated that Mr. Surtees refused all intercourse with his son-in-law, from the period of the marriage till he rose into consideration, and that his lordship then in his turn, having rejected the interested overtures to renewed intimacy, placed the seal on a commission of bankruptcy against his father-in-law, is wholly untrue. The facts were these: — a few days after the performance of the marriage-rite at Haddington, the bride received a letter of forgiveness, and shed tears of joy over her younger brother, who was its bearer. She and her husband returned to his father's house, remained there about a week, and then removed to the residence of Mr. Surtees, where they lived some months, and until they removed to Oxford. This gentleman, for probity and kindly feeling, was popular beyond any man in Newcastle. One of the first members of the Corporation, a wealthy banker, and receiver-general for the counties of Northumberland and Durham, he suffered no reverse of fortune, but lived expensively, and died rich. On his death, an active member of Parliament, and two of his younger sons, continued to conduct the affairs of the bank. But the business was carried on in a bold speculating spirit, without sufficient care on the part of the principals to every-day details. In a time of public pressure it therefore failed. We have shortly alluded to these

* Mr. W. E. Surtees.

matters of private history, that we may rescue the memory of Lord Eldon from a charge of vindictiveness, to which he was in thought and deed a stranger.

The statement that Mr. Scott had at this period a narrow escape from being a grocer is equally apocryphal. It has been reported, that, during his stay in his native town, a very honest and wealthy inhabitant, a grocer, who had long known his father and been intimate with the family, called upon him, and proposed, as he had himself no children, that he should join him in business. Mr. Scott, it was asserted, did not altogether decline the offer; but said that his final determination must depend upon a letter he expected to receive the next day from Oxford; that he had written to his brother, and should be guided in his future plans by the answer he might receive. That answer was a very kind one, and determined the question that he was not to be a grocer. The offer might have been seriously made, but could not have been contemplated in earnest by the young bridegroom, whose prospects, however discouraging, were far from being so desperate as must be inferred from his pausing over such a proposal. On his brother's invitation, he returned at the close of the long vacation to Oxford. It had become necessary from the monastic celibacy enjoined by the university statutes, that he should relinquish his fellowship. But after this formal relinquishment, a year's grace is still allowed to the party vacating, during which he is permitted to retain the emoluments of his fellowship, and to accept in his turn any college living that may fall vacant. In the whole of this period Mr. Scott steadily pursued his legal studies, both in compliance with his brother's wish, and in order, as he himself expressed it, that he might have two strings to his bow;—that he might enter the church if a living should fall vacant, and, if not, might follow the law. Fortunately for the lingering fellow, the year of grace passed away without presenting any inducement to the Church, and on the 28th of January, 1773, a day that should ever be held sacred by the members of that society, Mr. Scott was admitted a student of the Middle Temple. With the exception of keeping term, however, he continued to re-

side in or near Oxford; for some time in lodgings, afterwards at the house of his medical attendant at Woodeaton, and subsequently in the principal's lodgings in New Inn Hall (Sir Robert Chambers being on the point of departing as judge to India), of which society Mr. Scott became Vice-Principal, and even voted in that capacity so late as 1785, in the contest between his friend Thomas Wharton and the late Dr. Winstanley for the Camden Professorship of History. The vacations were pleasantly spent at the house of his friend Mr. Lane at Mill-end, near Henley. During this time, in order to increase his income, he took a part in the tuition of University College in conjunction with his brother, and Mr. Fisher, the master of the Charter-House. He also read lectures as the deputy of Sir Robert Chambers, who retained his situation of Vinerian Professor of Common Law, throughout the years 1774—1776. For this service he had, in addition to the use of the Professor's house at Oxford, the sum of 60*l.* a-year. To his brother's liberality he was also a willing debtor. While the young married couple continued to reside within a short distance from Oxford, Mr. Scott was in the habit of supping with them every Sunday, and on wishing Mrs. John Scott good night, regularly, as each quarter of the year came round, formally, but kindly and in silence, would slip a present into her hand.

Resolved not to add the guilt of ingratitude to that of indiscretion, and full of the youthful ambition which his early trophies had kindled, "aliquid jamdudum invadere magnum," Mr. Scott applied himself with such unremitting diligence to the severe studies necessary for securing success, that great fears were entertained by his medical friend and adviser lest he should undermine his constitution. On one occasion he thought it right to remonstrate with his patient, and to urge him to less mental exertion and fatigue. "It is no matter," said the late Chancellor, "I must either do as I am now doing, or starve." We have his own authority for saying that he read, according to Lord Coke's advice, "haud multa sed multum," that he read hard, and read to weigh and consider; that he rose as early as four o'clock in the morning, was abstinent in his meals, and frugal of repose. When fondly

dwelling on those laborious but not unhappy days, the old peer would confess to the habit of sitting up late at night over law books sometimes with a wet towel tied round his head—a practice much in favour with hard livers in the daytime and close readers at night, but which he adopted, not as a febrifuge, but a preventive of sleep. By close and continuous application; by never diverting his mind with the dissipation of desultory reading; by regular methods of study, and a constant recurrence to first principles, he not only acquired such an intimate acquaintance with the cases in the books as to know the very page in Vernon and the old reports, with the names of the parties, but was enabled to test each particular decision with former precedents, to mark the exact degree of accordance, and distinguish the minute points in which they might severally differ. He entered on his profession with a stock of learning that would not have disgraced the Bench, and on the 9th of February, 1776, having his mind (to apply a dictum of Lord Ellenborough) saturate with law, was called to the Bar by the Society of the Middle Temple. Quitting Oxford as a permanent residence, he took a small house, first in Cursitor Street and afterwards in Carey Street; and for six months studied conveyancing in the chambers of Mr. Duane, a generous Roman Catholic, who received the straitened pupil without a fee. They were called by himself not unprofitable months; and so thoroughly imbued him with the love of abstracts and the art of drawing, that he was considered in after-life a better conveyancer than Lord Redesdale, though not equal to that most eminent Chancery lawyer as a draughtsman in equity. His daily practice exemplified the pithy aphorism, which he subsequently made to the young Grants, that to succeed in the legal profession, one must live like an hermit and work like a horse. He there copied some folio books of conveyances, and wrote out his own abridgment of Coke on Littleton.

There has been much good sympathy wasted on the long and dreary interval which is presumed to have intervened between Mr. Scott's call to the Bar and his introduction to business. The mention of his name in the Reports, and his acceptance of a silk gown within seven years from the date

of the call, go far to disprove this generally received but erroneous opinion. He first went the Northern Circuit in the summer of 1776; and in the autumn of that year, Mr. William Scott thus writes to his brother Henry:—

"My brother Jack seems highly pleased with his circuit success. I hope it is only the beginning of future triumphs. All appearances speak strongly in his favour. If he does not succeed I will never venture a conjecture upon any one thing again. He is very industrious, and has made great progress in the knowledge of his profession."*

Thanks to his wife's connexions, and the active zeal of Mr. Surtees, even the second probationary year did not pass away† without presenting the welcome tribute of a general retainer from the corporation of Newcastle—the quiddam honorarium in the shape of heavy fees from some of its wealthy merchants, and that most lucrative of all professional gains, an election committee. Mr. Bowes, in March, 1777, having contested Newcastle unsuccessfully against Sir John Trevelyan, petitioned against his return; and retained Serjeant Glyn, Dunning, Wilson, John Lee, and the then unknown John Scott, as his counsel. His brother William, in a letter dated "London, May 16. 1777, says:—

"I am very happy to find that my brother John acquitted himself so much to the satisfaction of his friends in the matter of the Petition."

These early sources of professional income deserve the more especial mention, as they appear to have escaped the knowledge of Mr. Twiss in his minute, able, and entertaining narrative. By means of a letter to Lord Darlington, to solicit that nobleman's interest with Lord North or Lord Thurlow, the young barrister received the promise of a snug little appointment—that of Commissioner of Bankrupts. The Chancellor made afterwards a convenient excuse for not fulfilling his promise,—that it would have made the young man idle and lazy. To the same private but powerful intercession

* Surtees.

† The fruits *in London* of the first year were given for pocket-money to the wife—she received half a guinea!

he was also indebted for the Duke of Northumberland's professional business. When the Duke was commander-in-chief of the northern forces during the American war, his headquarters were fixed at Newcastle, and he became the occasional guest of Mr. Surtees. Mrs. Scott was at that period staying at her father's, with her infant son John. This distinguished visitor would often take the little man on his knee, calling him his captain, and saying laughingly, that he should soon be in his regiment. He did not forget the father, then almost unknown, when urging before the Lords some obsolete claim of the Percy to an office held by the Ancaster family, and in right of his wife by Lord Gwydir. "I consider the fee," said Mr. Scott, "as only a handsome way of giving me twenty guineas a-day for walking down to the House of Lords."

In Brown's Chancery Cases, so early as February, 1779, we read of Mr. Scott, as junior to Ambler and Madocks, arguing the nice point whether the word "relations" in a will were restricted to the next of kin within the Statute of Distributions. In the same year an instance of his acumen is recorded, in a case for specific performance of an agreement for lease of a house. The bill called on Dr. Compton to produce the original letter containing the agreement, and to provide for his not producing it, procured a copy in plaintiff's possession to be stamped. Mr. Scott, for the defendant, objected that the copy could not be read, because the original was in Court, and that the original letter could not be read because it was not stamped: he contended that it could not now be stamped, because the twenty-one days limited, by act of parliament had expired. The case stood over, and meantime the plaintiffs, by good management, contrived to get possession of the original document, and had it ready stamped for the morrow. From the singular inaccuracy of Mr. Brown as a reporter, and his slovenly manner of huddling over cases, a very faint and feeble and indistinct notion is conveyed of Mr. Scott's arguments. When quarrelling on the bench with one of the judgments of his predecessor, Lord Eldon said, "that he should have no reason to complain, if he had urged the case on the Court in the shameful way he is represented, or rather mis-

represented, to have done, by Mr. Brown, in total ignorance of his meaning. The printed report gave no idea even of the scope of his observations."

For an able description of his mode of pleading, we are, however, indebted to a contemporary publication, "Strictures on the Lives of eminent Lawyers." "His speaking is of that subtle, correct, and deliberate kind, that has more the appearance of written than of oral eloquence. He branches forth his arguments into different heads and divisions, and pursues the respective parts through all their various ramifications, with such methodical accuracy, that argument seems to rise out of argument, and conclusion from conclusion, in the most regular and natural progression; so that those who are not acquainted with his practice, would suspect that he had studied and prepared his speeches with the most diligent attention; while others, who are better acquainted with the business of the Courts, feel their admiration and surprise increased from the knowledge that a man of his extensive business, so far from studying what he shall say, can scarce find time to glance his eye over the numerous papers that come before him. He is also particularly distinguished for his aptitude and ingenuity of reply. His systematic mind seems to methodize, with inconceivable rapidity, the arguments of his opponents. In the short space of time between the pleadings of his adversary and his reply, every thing seems digested and disposed; and his mode of replication seems planned in the nicest order. He will frequently take up the concluding argument of his opponent; or at other times seize upon some observation which has fallen in the middle of the adverse speech. Here he will begin his attack; and proceeding by his usual clear and deliberate method, pursue one regular chain of reasoning till he has confuted, or at least replied to, every proposition advanced against him."

But though the pages of Mr. Brown fail totally in reflecting the genius and acquirements of the advocate, they give the names of the counsel employed, and thus show indirectly the effects of his arguments. His name occurs rarely, and at distant intervals, in 1779 — occasionally in the beginning of 1780, more frequently in the latter end of that year — still

more frequently, and often as leader, in 1781 and 1782 — and perpetually in 1783. So inaccurate is that eccentric gentleman, Mr. Bentham (we quote from his "Indications respecting Lord Eldon") in his statement "that Mr. Scott waited the exact number of years it cost to take Troy, and had formed his determination to pine no longer, when Providence sent an angel in the shape of a Mr. Barker, with the papers of a fat suit, and a retaining fee. He became an old clerk, was a favourite at court, and had his entrées. Without an extra stock of powder in his hair, the plenipotentiary never durst approach the presence."

Passing over the precision and fears of this powdered functionary, we may find in the conversation of Lord Eldon, and his colloquial anecdotes of early life, a solution of the exaggerated opinion which Jeremy Bentham and others have formed as to the extent and duration of Mr. Scott's preliminary struggles, far less than those which many able Judges have undergone, and which he soon surmounted, in comparison with the ordeal which the majority of barristers, quadrupled at the present day, must expect to pass. In the fond recollections of former days, the Chancellor may have unwittingly heightened the doubts, the difficulties, and embarrassments, which ushered in his professional career, and placed in too strong a contrast the clouds and mists which hung over its commencement with its meridian brightness, and the subdued glories of its close. His third year in London being less lucrative than the second, Mr. Scott contemplated taking a house in Newcastle. Shortly afterwards, when dining with Mr. Heron, a leading attorney at Newcastle, he expressed himself as about to settle there. Mr. Heron, however, attempted to dissuade him, on the ground that London was the proper field for such powers and acquirements as his; and added, "only go, and I'll give you a guinea now, on condition that you give me a thousand when you're chancellor." And so saying, he handed him a guinea, which Mr. John Scott proceeded to put into his pocket. On this his brother, Mr. William Scott, who was also present, exclaimed in a tone of remonstrance, "Jack, you are robbing Heron of his guinea," and he put it back. Not meeting with the full success in London, which his merits and reading deserved above some

twenty competitors at the Chancery bar, and labouring under that feeling of diffidence and despondency which is natural to sensitive genius, he sighed, as the father of a family, for the lucrative ease of his native place, and would have bartered the hopes of ambition for relief from domestic anxieties. His triumphant argument, however, in the celebrated case of Ackroyd v. Smithson, (reported in 1 Brown's Chancery Cases, 505) and delivered by him on the 20th March, 1780, when he had just completed his fourth year at the bar, gave the non-suit, as Erskine technically termed it, to the notion of a provincial life. The following account of this cause was given by Lord Eldon to the late venerable Mr. Justice Richardson. A testator had left some land to be sold, and the proceeds to be divided between fifteen parties. One of these died in the life-time of the testator, and thus a contest arose for his share of the proceeds between the parties entitled to the other shares and the heir at law. On the hearing before the Master of the Rolls, Sir Thomas Sewell, Mr. Scott received a guinea brief to consent on the part of the heir. He declined to consent on behalf of the heir, and the suit was decided in favour of one of the other claimants. But there was an appeal from the decision of the Master of the Rolls, and when the case came on to be argued before the Lord Chancellor, Mr. Scott again received a guinea brief to consent for the heir. On this occasion he determined to adopt his former course, saying, that he had felt justified in the first instance in advising a claim on the part of the heir, now that he had heard the case argued on the former trial, he still thought a good deal might be said in his favour. The attorney replied, that his present instructions did not authorize him to do more than consent, and went away; but, returning the next day, fully authorised Mr. Scott to take whatever course he might deem most advisable. The other parties argued their several claims with such success, that Lord Thurlow asked what could be said on the other side. Mr. Scott then contended at great length, and with consummate ability, that the testator had ordered this fifteenth share of the property to be converted into personalty for the benefit of one particular individual, and that, therefore, he never contemplated its

coming into possession of either the next of kin, or the residuary legatee, but being land, at the death of the individual, it came to the heir at law. At the conclusion of his elaborate argument, Lord Thurlow confessed that he had been greatly startled by the force and novelty of the topics urged upon him, and must take time to consider his decision. He ultimately decided, with many compliments to the advocate for his ingenuity, in favour of the heir-at-law. The next morning (to apply Lord Byron's emphatic account of his sudden success) Mr. Scott "awoke, and found himself famous"— the acknowledged favourite of the Chancellor, and in high esteem with the solicitors of the Court. In the year following he refused the offer of a Mastership in Chancery, averaging an annual income of more than 2000*l.*, aspired to a silk-gown the next year, received his patent of precedency and the presentation to a snug borough in 1783, and thenceforward took his place in the first ranks of those happy and so much envied lawyers who

> "From morn to night at Senate, Rolls, and Hall,
> Plead much, read more, dine late, or not at all."

In the spring of the year 1781, Mr. Scott received his second introduction to the lucrative committee business of the House of Commons. The lucky chance to which he owed his next step, across the threshold of the House, is thus related by Mr. Montague.

"In March 1781, in consequence of the illness of Mr. Cowper not permitting him to attend as counsel in the Clithero Election Petition, for which he was retained, and Mr. George Hardinge refusing to act as leading counsel, when he was instructed only as junior, the solicitor for the petition resolved to entrust the conduct of the cause to Mr. Scott. At six in the morning, he was awakened by the offer of the brief in the matter which was to be argued the same day before a committee of the House of Commons. Mr. Scott, after some deliberation said, "It is at this short notice impossible for me to argue the case; but if you will be content with my stating the facts to the committee, and they will grant me a short indulgence, I will endeavour to make myself

master of the law, and will do my best." With this condition the solcitor was satisfied.

Mr. Scott was ready before noon with a knowledge of the facts, and addressed the committee. Having stated his case at some length and with great perspicuity, he explained the situation in which he was placed, and his unavoidable inability to do any justice to the merits; "I hope," he added, "that I am not improperly trespassing by venturing to solicit a few hours' indulgence." It was instantly granted. The ability which he had manifested was soon circulated through the profession, with the report that he had resolved to leave London. Mr. Mansfield and Mr. Wilson, two eminent counsel, conjured him not to leave Westminster Hall. They assured him that his success was certain; and Mr. Wilson (afterwards a judge of the Common Pleas) added, "that the want of money ought not to deter him, for the assistance of money was ready to be proffered, and that he had the small sum of 500*l.* which he was desirous to invest on this certain security." This kind offer, which was made on Mr. Scott's return from the committee-room to his house, he was not under the necessity to accept, as from that period all his wants were supplied, and more than supplied, by his own exertions. Lord Eldon's own account of the same occurrence displays a pleasing trait in his character. "Passing one day from a committee-room of the House of Commons into Westminster Hall, I was accosted by Mr. Mansfield, then a leader in the Courts, who said, 'Mr. Scott, I am told you are about to quit us in disgust. Let me advise you not to be too hasty. Try London for another year.' I felt flattered by this advice, which was immediately after repeated by another leader, with whom I spoke in the Hall. In deference to their opinions, I gave up my own. In the course of next year I had plenty of business; but the great source of gratification to me was, that I afterwards, in character of Lord High Chancellor, made that same Mr. Mansfield Chief Justice of the Common Pleas."

The celebrity of Mr. Scott travelled slowly to the northern circuit, where, for many years, at all the assize towns except his own, he could boast of no higher business than the defence

of a few prisoners arraigned for small offences in the criminal courts, for whom, he used pleasantly to declare, that he was a most judicious advocate; for he said as little and interfered as little as possible. One ingenious method of insuring a conviction he used to relate with much glee. A man had been prosecuted for stealing salmon out of the river, and acquitted by the jury on the ground that his offence only amounted to a trespass, the law holding salmon to be animals feræ naturæ, neither tame nor reclaimed. A constable, who heard this doctrine laid down most emphatically from the bench, went straightway — with a cleverness which deserved the place of chief thief-taker of Bow-street — to fish, caught a salmon, and marked it by inserting a twig through its snout. This salmon was immediately returned to the river, and, unluckily for the poacher, found its way into his basket the following morning. He was again committed for the larceny, tried, and convicted, the salmon thus ornamented and distinguished being no longer feræ naturæ, but property. On another occasion, Mr. Scott being detained to defend a village blacksmith for an assault, with especial instructions to cross-examine the prosecutor most rigidly (as Serjeant Cockle would have said, "to rag him to death"), acquitted himself so much to the satisfaction of this man of the smithy, that he exclaimed, in his transport of amazement at the exhibition of so much zeal and vigour by so modest a counsel, "Well done, young chap; you have earned your fee;" and was forthwith committed for his turbulent gratitude. The history of the first civil action which brought Jack Scott, as he was familiarly and generally called, into notice, rests on much less weighty authority than the anecdotes of his inauguration into the Court of Chancery and the committee-rooms; but we shall present the tradition, as handed down to us, to the belief or credulity of our readers, without comment "At York the judges often left remanets. Mr. Scott was junior in an action of assault, and when the cause was called on he rose to say, that his leader, the Attorney-General for the County Palatine of Durham, was engaged in the crown court in some Mint prosecution, and to express his hope that the court would postpone the cause for a short time. "Call

the next cause,' exclaimed the judge, in a tone which implied, 'Strike this one out of the list.' Mr. Scott immediately — it was a case of desperation — addressed the jury: 'A Mrs. Fermor and an elderly maiden lady, Miss Sanstern, were opposed to each other at a whist-table, playing, according to Mrs. Battle's advice, the rigours of the game, and had a slight difference. Words were the prelude to blows, and, to the shame of Yorkshire gallantry, Mrs. Fermor was forced from her chair to the floor.' The evidence appeared conclusive that Miss Sanstern had committed the first assault. But the defendant's counsel objected, that there was a fatal variance between the declaration and proof, the declaration alleging that the assault had been committed by the hand of the defendant, the proof being that she had flung her cards into Mrs. Fermor's face. Mr. Scott replied, that in the common parlance of the card-table, a hand means cards. She did assault the plaintiff with her hand of cards." Such is the popular version. Mr. Scott's own recollection was, that he gained a verdict for a small amount, and, what he deemed of much more importance, made the jury laugh. He soon exchanged these petty feats for more important forensic victories, and in a few years led the circuit.

On the 16th of June, 1783, Mr. Scott was introduced into parliament, through the Chancellor's influence with Lord Weymouth, for the close borough of Weobly. He took his seat on the same night as Erskine, and was present at the launching of the East India Bill, that precious argosy in which was freighted the very existence of the ministry. His first remarks upon the scheme are highly characteristic. He said, as he had not had it in his power to give that patient consideration to the business which its importance demanded, he should be obliged to confine himself to a narrow view of the subject. The bill seemed to him rather of a dangerous tendency, but he would not declare against it; he would rather wait till he had got more light thrown upon the subject. This cautious expression of doubtful hostility to the measure, so unlike the bold, decisive, and peremptory methods of parliamentary discussion, elicited many compliments from the Treasury bench, given in a tone of fluttering hope

that he might perchance prove a lukewarm opponent, or be converted into a neutral. Mr. Secretary Fox expressed a high opinion of the learned gentleman's abilities and goodness. Though "he had not had the pleasure of hearing him speak before in that House, yet he was not a stranger to his eloquence, and did not doubt of hearing it employed at all times on the side of equity." This good humour, however, soon vanished; in a few nights decision took the place of doubt, and on the Secretary scoffing at "La Pucelle leading the van," Mr. Scott replied with considerable warmth, that he should not consult any honourable gentleman as to the time when, or the topics on which, he should speak. His speech in opposition to this daring measure presents the only specimen of his finished rhetoric, and is curious for its application of scriptural language, and the profusion of personal self-laudatory topics. Mr. Scott alluded to certain insinuations that, agreeably to the common conduct of lawyers, he would not scruple to espouse any cause which he should be paid for defending, and reprobated in the strongest terms such unworthy imputations. He asserted the reluctance of his nature to such practices. "It was an aggravation of the affliction he felt that the cause of it should originate with one, to whom the nation had so long looked up. A wound from him was doubly painful; like Joab, he gave the shake of friendship, but the other hand held a dagger with which he despatched the constitution." Mr. Scott then made an apology for alluding to any thing recorded in sacred writ, and read some verses in different chapters of the book of Revelations, which seemed to express the intended innovations in the affairs of the English East India Company "And I stood upon the sand of the sea, and saw a beast rise up out of the sea, having seven heads and ten horns, and upon his horns ten crowns. And they worshipped the dragon, which gave power unto the beast, and they worshipped the beast saying, Who is like unto the beast? Who is able to make war with him? And there was given unto him a mouth speaking great things, and power was given unto him to continue forty and two months." "Here," said Mr. Scott, "I believe there is a mistake of two months. 'And he caused all, both small and great, rich and poor, to receive a

mark in their right hands or in their foreheads.' Here places, peerages and pensions are clearly marked out. 'And he cried mightily with a strong voice, saying, Babylon the Great (plainly the East India Company) is fallen, and is become the habitation of devils, the hold of every foul spirit, and the cage of every unclean bird.'" Mr. Scott, after this somewhat profane waggery, quoted a passage from Thucydides, who remarked that injustice was more irksome to men than violence. He repeated that passage in Othello where Desdemona cries out:

> "Kill me not to-night, my lord,
> Let me live but one day — one hour."

To this singular display of pedantic pleasantry the House listened in mute amazement, and Sheridan retorted with such point and wit on the absurd jumble of Scripture and Shakspeare, in the mouth of a lawyer, that he never ventured on a repetition of similar topics. According to the common fate of lawyers, he made less impression on the House than might have been anticipated from his previous reputation. There was a want of that warmth and animation, that bold declamatory vehemence, which distinguish the senatorial from the forensic orator. His speeches were always shrewd and clear, addressed to the understanding rather than the fancy, impressive but not sufficiently energetic. He displayed great skill of fence and dexterity in the use of his weapon, but had not sufficiently the spirit of a gladiator for the arena he filled, to give entire satisfaction to a classical audience, for he drew no blood. The special pleader refined and subtilized and elaborated nice distinctions, but wanted the hardy assertion, the caustic repartee, the biting, scoffing sarcasm, which are so popular with that amusement-loving and excitable assembly. He spoke as if habited in forensic costume, and addressing a domestic forum. The maxim of the schools, "Pectus est quod disertum facit," was so perseveringly pursued in his addresses to the House, that we constantly meet with such figures as these — "He would rather have the gown stripped off his back than be guilty of double dealing." "He felt as if he had set his foot on a viper, being accused of misrepresentation." To these expressions of feeling, the sincerity of

which is far less questionable than the taste, and other peculiarities in his style of oratory, Mr. Francis, a keen partizan of the fallen ministry, alluded in a fierce philippic, which, mixed with much injustice, contains many discriminating points of character. The portrait is evidently drawn by an unfriendly hand; the wrinkles, the wart, the harsher lines of countenance are all there; but it is still the sketch of a master, and the likeness, even though disagreeable, makes it valuable.

"We have a learned person, Mr. John Scott, among us, who is universally acknowledged to be the great luminary of the law; whose opinions are oracles, to whose skill and authority all his own profession look up with reverence and amazement. Well, sir, what information have we gained from this most eminent person! I will not attempt to repeat or follow so long, and, as I have been told, so ingenious an argument. Ingenuity, it seems, is the quality which is chiefly wanted and relied on, upon the present occasion. But I well remember the course of it. The first half hour of his speech was dedicated to himself. He told us who he was; he explained to us very distinctly the whole of his moral character, which I think was not immediately in question, and assured the House that his integrity was the thing on which he valued himself most, and which we might with perfect security rely on. Of his learning, I confess, he spoke with more than moderation, with excessive humility. He almost stultified himself for the purpose of proving his integrity. For the sake of his morality he abandoned his learning, and seemed to dread the conclusions that might be drawn from an overrated opinion of his excessive skill and cunning in his profession. In my mind, sir, there was no occasion for this extraordinary parade. The learned gentleman's reputation in private life, I believe, is unimpeached. What we wanted, what we expected of him was his learning, not his character. At last, however, he proceeded to the subject of debate; here we were all in profound silence,—attention held us mute. Did he answer your expectations? Did you perfectly understand him? Did he perfectly understand himself? I doubt it much. If he had understood, he could have ex-

plained himself to the meanest capacity. If you had distinctly understood him, you might distinctly remember what he said. Now setting aside the adept (I mean his own profession) — setting aside those who have been initiated in the mysteries, is there a man here who can remember, and is able to state, the learned gentleman's argument. I believe not. For my own part, though it is impossible for me to listen with more attention than I did, I confess I soon lost sight of him. At first, indeed, he trifled with the subject in a manner that was intelligible, at least, perhaps dexterous, though not conclusive. He argued some little collateral points with a good deal of artifice; he made many subtle, argumentative distinctions; he tried at last to involve us in nice logical difficulties, and to drive us ad absurdum, by what he called unavoidable inference from false premises. In short, he attacked, or defended some of the outposts of the question with what, I suppose, is held to be great ability in Westminster Hall. He skirmished well at a proper distance from the main body of the subject. All this I acknowledge. But when he came at last to the grand point at which we had waited for him so long, — at which we had impatiently expected the predominant light of his superior learning, the decision of the oracle, did he resolve your doubts? Did he untie, or did he cut the Gordian knot? Did he prove to you, in that plain frank popular way in which he ought to have addressed this popular assembly, and which he would have done had he been sure of his ground — did he demonstrate to you, that the Act of 1784 clearly and evidently, or even by unavoidable construction, gave the power declared by the present bill (East India Declaratory Bill)? Sir, he did no such thing. If he did, let us hear it once more. He who understands can remember. He who remembers can repeat. I defy any man living, not a lawyer, to recite even the substance of that part of his argument. The truth is, he left the main question exactly where he found it. So it generally happens. It belongs to the learning of these gentlemen and to their prudence not to decide. It is so now. It was so 2000 years ago. The old gentleman in Terence, who consulted three gentlemen of the long robe of those days

about the validity of his son's marriage, met exactly with the same success, and received the same satisfaction that we have done. After complimenting one another, as they do at present, one of these learned persons told him, 'Sir, your son's marriage is valid in law.' The other, 'Sir, your son's marriage is good for nothing.' The third, who was the great luminary and oracle of his profession, the umpire who was to decide the question, what said he? Why, sir, with a modesty becoming his great learning, all he said was, 'Ego amplius deliberandum censeo.' They then made their bow to one another, took the old gentleman's money, and wished him a good morning. Observe the state of mind in which they left him: — 'Probe fecistis. Incertior sum multo quam dudum.' Well may the Court of Directors, well may this House make the same observation on the present occasion. In the name of God, and common sense, what have we gained by consulting those learned persons? It is really a strange thing, but it is certainly true, that the learned gentlemen on that side of the House, let the subject be what it may, always begin their speeches with a panegyric on their own integrity. You expect learning, and they give you morals; you expect law, and they give you ethics; you ask them for bread, and they give you a stone. In point of honour and morality they are undoubtedly on a level with the rest of mankind. But why should they pretend to more? Why should they insist on taking the lead in morality? Why should they so perpetually insist upon their integrity, as if that objection were in limine, — as if that were the distinguishing characteristic, — the prominent feature of the profession? Equality is their right. I allow it. But that they have any just right to a superior morality, to a pure and elevated probity, to a frank, plain, simple, candid, unrefined integrity beyond other men, is what I am not convinced of, and never will admit."

The favour of Mr. Pitt to the rising lawyer, and his able support of that minister's East India measures, furnished the venom to this bitter invective. But the confidence of the discerning statesman in Mr. Scott increased with every fresh opportunity of testing his judgment; and on the first vacancy that ensued, on the 27th of June, 1788, he was chosen, almost

without a rival, Solicitor-General, and knighted, much to his own annoyance. He pleaded ancient precedents, but the new Attorney-General having stooped down without objection for the usual accolade, the king cut short the murmurs of the junior with saying, "Pooh, pooh! kneel down! You must be both served alike." On the royal illness which shortly followed, Sir John Scott drew the Regency Bill, and with sound advice, far superior to the discretion of Lord Loughborough, enabled Mr. Pitt to gain a complete victory over his rival in the subsequent discussions. Strengthened by habits of official connexion, his intimacy with the Prime Minister soon grew into close and confiding friendship. None knew better how to choose his friends, and Mr. Wilberforce mentions the many pleasant social days gaily spent at Wimbledon in the company of Pitt, Dundas, and Scott. "I saw much of Sir John Scott," he writes in his Diary, "and it is no more than his due to say, that when he was Solicitor and Attorney-General under Pitt, he never fawned and flattered, as some did, but always assumed the tone and station of a man who was conscious that he must show he respected himself, if he wished to be respected by others."

In February, 1793, a dark and stormy epoch, on the promotion of Sir Archibald Macdonald to the office of Chief Baron of the Exchequer, Sir John Scott assumed the onerous duties of Attorney-General, and very soon afterwards commenced the State prosecutions, the most important of any in the annals of criminal jurisprudence.

The history of these important trials has been too frequently given in the preceding memoirs of eminent contemporary judges to require further notice at present than such occasional memoranda as illustrate the character of the man, and show the manner, alike firm, mild, and conciliating, in which he performed the duties of his office. They are arduous even now, when the use of ex-officio informations is generally left in a state of abeyance, but were most important at that period, when a determined exercise of the large powers vested by the constitution in the first criminal officer of the Crown could scarcely suffice to save the kingdom from anarchy. It required all his tact and firmness to restrain the counsel

for the prisoners, Mr. Erskine, then rioting in the exuberance of success and animal spirits, from overleaping all the barriers of sober form and decorum. His excitable temperament was always ready to explode,

"And zeal looked eager from the lawyer's eye."

Having cited some democratic writings bearing the signature of two members of the Cabinet, he pointed the ready sarcasm at an obnoxious Government. "I wish it to be understood I am no advocate for the consciences of the Duke of Richmond or Mr. Pitt." The presiding judge (Chief Justice Eyre) rebuked the irregular advocate with his usual dignity.

"It is certainly true: but this is rather too grave an occasion for such an observation." The short-hand writer thus continues the report:—

Attorney-General.—"It is not a proper occasion for this frippery."

Erskine.—"I say that is not a proper expression."

Attorney-General.—"I will repeat it."

Erskine.—"You will not repeat it any where else."

Lord C. J.—"The gentlemen, I hope, will recollect that they are upon a solemn trial . . . . It is impossible the cause can go on, unless the gentlemen at the bar will a little understand one another; you are a little too apt to break out, and I think there has been a little inclination sometimes to observe more upon that than the occasion called for."

In the course of a triumphant cross-examination, Mr. Erskine exclaimed, "What date, good Mr. Spy?" The Attorney-General immediately rose to protect his witness. "Really that is not a proper way to examine witnesses. Lord Holt held strong language to such sort of an address from a counsel to a witness, who avowed himself a spy." His learned friend exclaimed petulantly, "I am not to be told by the Attorney-General how to examine a witness," but desisted from his epithets. In arguing a point of law, he soon afterwards received a grave rebuke for his frequent introduction of popular topics ad captandum. "I wish," said Sir John Scott, "that my friend would at once decline talking of the

difference between a poor shoe-maker and men of high rank, or that he would state the facts upon which he thinks fit to hold that sort of language. My Lord, we live in a country in which the providence of the law, like the providence of God, is over us all, high and low, rich and poor; and, speaking for myself, I desire to be disgraced from this moment, if in the course of this trial I either have conducted myself, or can conduct myself, in such a manner as not to do that justice to the prisoner which the law means should be done to him. I think I should be worthy of that death, and ten such deaths, as the prisoner must suffer, provided he is found guilty upon this trial." The Attorney's anxiety to discharge his duty to the Crown and public, without exciting any personal altercation, was forcibly manifested by another incident during the progress of the trial: "I must intreat your Lordships to interpose, and I hold it to be my duty to do it. There is a gentleman, who is not counsel in the cause (Felix Vaughan), who sits next to Mr. Gibbs, and when I asked the witness what letter it was, I heard him, in this part of the court, as I believe some other gentlemen did, say, 'the letter about pikes.' Now I do not mean to say, and I desire in justice to that gentleman to observe, that I do not mean to say by any means, that he intended the witness should hear that explanation given to Mr. Gibbs. I do not believe it; I disavow that; but I must desire that no gentleman should sit next the counsel for the defendant, or the counsel for the crown, who under, not the colour, I will not use that word, but, under the fact of communicating and conversing with the defendant's counsel should, in point of fact, lead, I do not mean to say in point of intention, the witness to give an answer which otherwise he could not have given." The interposition ended with a polite hint at caution from the Chief Justice.

In the prosecution which followed, that of the witty and imperturbable Horne Tooke, Sir John Scott found himself exposed to a still more dangerous and persevering fire from a practised sharp-shooter. That clever but unprincipled politician went to his trial with as much assurance of applause as a practised actor when he makes his entrée on the stage, and

felt so confident of acquittal that he announced his intention of giving balls in Newgate (the Prince of Wales wittily suggested a *Catch* Club). From his skill in etymology, he laid the following snare for the Attorney-General in examining a witness. "Should you, notwithstanding the conviction and SHAMEFUL punishment of Mr. Muir, afterwards have associated with him?"

Attorney-General.—"I must not sit here, an officer of public justice in this country, to hear a question put in that way—shameful punishment."

C. J. Eyre.—"I certainly conceived the word shameful there meant ignominious and disgracing the person" . . . . . Tooke:—"Certainly no other, my Lord; not at all reflecting upon those who passed the punishment." He meant it notwithstanding.—Having commented on the refusal to confer upon him a Master's degree in a manner that called forth much grave animadversion, Mr. Tooke soon gained an opportunity of passing a merry quip on his corrector. The Attorney-General, in putting questions to the Bishop of Gloucester, incautiously asked, "Do you know any thing of the proceedings of the Constitutional or London Corresponding Society for the last three years?" On the bishop answering, "Nothing at all"—Mr. Tooke took his pinch of snuff in triumph, and burst forth, "Is not that almost as bad as my speaking of the Master's degree? And now we are even; because it must be as great a degree of insult to ask the venerable Dr. Beadon about those societies, as my speaking lightly of the qualification for a Master's degree."

Attorney-General.—"I will not let this pass without animadversion from your lordship, if I am wrong, and without informing this court that it is not to part upon this occasion with a laugh."

C. J. Eyre.—"It is irregular; at the same time very evident the Bishop of Gloucester could not possibly know any thing of these societies."

A portion of the Attorney-General's reply deserves to be noticed for the stinging sarcasm which it elicited from the accused, who frequently changed places with his accuser, and, instead of acting on the defensive, stood forward a prompt

and eager assailant. "It has pleased the providence of God," Sir John Scott commenced, "in such of his dispensations as affect the situation which I am to hold in this world, to call upon me at this moment to execute a duty so awful, and so important, comprehending obligations of such a nature, and so various, that I protest solemnly in the face of my country, and in the face of that Providence, that I can look only to his support to enable me to execute it as I ought to the public and the country. I will say this in the face of my country—I defy any man living to contradict me in what I am now stating—that as I have never sought, to my knowledge I mean, any situation in which I stand, otherwise than by the industrious exertion of such talents as God may have given me, so I here declare, that not one step would I take in this prosecution repugnant to the dictates of my own judgment, exercised according to what my conscience prescribes as to that judgment, for all this world has to give me. Gentlemen, why should I? You will allow me to say, after all that has passed, that I have no desire with regard to myself in this cause, but that my name should go down to posterity with credit. I cannot but remember this is an interest most dear to me. Upon no other account will my name be transmitted to posterity; with these proceedings it must be transmitted. That name, gentlemen, cannot go down to posterity without its being understood what have been my actions in this case. And when I am laid in my grave, after the interval of life that yet remains to me, my children, I hope and trust, will be able to say of their father, that he endeavoured to leave them an inheritance, by attempting to give them an example of public probity, dearer to them than any acquisition or any honour than this country could have given the living father to transmit to them." At this period Sir John Scott shed tears, and to the surprise of the court, Mr. Solicitor-General was seen to weep in sympathy with the emotion of his friend. "Just look at Mitford," was the remark of a neighbour to Horne Tooke, "what on earth is he crying for?" "Mitford is crying, too," said Tooke, "at thought of the little inheritance that poor Scott is likely to leave his children!"

Encouraged by the success of this clever sally, and the scarcely suppressed merriment of those within hearing, the accused soon contrived to fasten a public interruption on his accuser. Having said unguardedly in the heat of his address, "If you should think the gentleman at the bar did not mean to depose the king, but meant to compel the king to call a different parliament from that which the law and constitution of England has given him, if such was his meaning, the charge is made good. The king ought to lose his life, and I trust would be liable to lose his life, rather than govern otherwise than according to his coronation oath." He was at this point of his address suddenly stopped by Mr. Tooke — "What! is the Attorney-General talking treason! I should be unhappy to mistake you. Did you say the king ought to lose his life if"— Sir John Scott, as good a subject as ever bent the knee to royalty, was compelled to explain his incautious phrase, and to resume an argument at disadvantage, the scope of which had been so effectually interrupted. "The king, as bound by his coronation oath, would resist any power that should seek to compel him to govern otherwise than according to law, and in resisting such a power, he must inevitably lose his life." A second verdict of acquittal, pronounced amid the immense applause of a crowded Court, attested the reluctance of the jury to give effect to the dangerous doctrine of constructive treason, for which the Attorney-General so forcibly and at such length contended. His opening speech, in Hardy's case, occupied nine hours, the extreme prolixity of which, as he confessed in after-life, almost killed himself, and effectually sickened his audience. Mr. Montague has recorded some interesting particulars of the close of the trial: — "The jury retired to deliberate; upon their return their names were called over, I shall never forget that awful moment. 'Gentlemen of the jury,' said the Clerk of Arraigns, 'are you agreed in your verdict? What say you — is Thomas Hardy guilty of the high treason, of which he stands indicted, or is he not guilty?' 'Not guilty,' in an audible tone, was the answer. It was received in Court silently and without noise — all was still — but the shout of the people was heard down the whole street. The door of the jury-box was opened for

the jurymen to retire; the crowd separated for them as the saviours of their country. I was preparing to retire, when Mr. Garrow said, 'Do not, Mr. Attorney, pass that tall man at the end of the table.' 'And why not?' said Mr. Law, who stood next. 'He has been here,' answered Mr. Garrow, 'during the whole trial, with his eyes constantly fixed on the Attorney-General.' 'I will pass him,' said Mr. Law. 'And so will I,' was my rejoinder. As we passed, the man drew back. When I entered my carriage, the mob rushed forward, crying, 'That's he, drag him out.' Mr. Erskine, from whose carriage the mob had taken off the horses to draw him home in triumph, stopped the people, saying, 'I will not go without the Attorney-General.' I instantly addressed them, 'So you imagine that if you kill me, you will be without an Attorney-General? Before ten o'clock to-morrow there will be a new Attorney, by no means so favourably disposed to you as I am.' I heard a friend in the crowd exclaim, 'Let him alone, let him alone!' They separated, and I proceeded. When I reached my house, in Gower Street I saw close to my door the tall man who stood near me in Court. I had no alternative. I instantly went up to him. 'What do you want?' I said. 'Do not be alarmed,' he answered, 'I have attended in Court during the whole of the trials. I know my own strength, and am resolved to stand by you. You once did an act of great kindness to my father. Thank God, you are safe at home; may he bless and protect you!' He instantly disappeared."

A few weeks after these trials Lord Eldon met, in Westminster Hall, Mr. Horne Tooke, who walked up to him and said, "Let me avail myself of this opportunity to express my sense of your humane and considerate conduct during the late trials." Indeed, whoever peruses Sir John Scott's speech upon this occasion, will find nothing harsh, nothing malignant, nothing that bears with undue severity upon the conduct of the prisoners. It is a bold and masterly exposition of the law of treason, and a clear statement of the immense mass of evidence to be adduced in support of the indictment, but with no attempt at eloquence. He could not, if he would, have described the object of his prosecution in the impassioned

language of Burke. "The very nature and constitution of a self-constituted assembly generates danger, and encourages excess. Compare such a constitution with the established authorities of the land, all controlled, confined to their respective spheres, balancing and gravitating to each other, all symmetry, all order, all harmony! Behold on the other hand this prodigy in the political hemisphere, with eccentric course and portentous glare, bound by no attraction, disclaiming any orbit, disturbing the system, and affrighting the world!"

No laboured eulogy can carry further the effect of Sir John Scott's personal demeanour and the general homage paid to his integrity and candour, than the simple fact, that for six years of active official and extra-official duty, during which he screwed the pressure of his power more tightly than any Attorney-General before or since, with the single exception of Sir Vicary Gibbs, he should still have retained a large share of personal good will, and should have been the favourite alike of the bar, of suitors, and the public. In his state prosecutions, in matters of life and death, he almost invariably failed. In the last, that of O'Connor and others for high treason, tried in 1799, Mr. (afterwards Baron) Gurney could emphatically warn the jury to caution, and declare "The Attorney-General in his opening has said, with a seriousness and solemnity well befitting the occasion, that he should make out such a case against the prisoners at the bar that he thought it was not within the compass of possibility for them to give such an answer to it as to entitle them to a verdict of acquittal. I have heard the same kind of language from the same learned gentleman repeated in the same solemn manner more than once, or twice, or thrice, or even four times, but I never yet knew that jury in a case of high treason, who at the close of the cause coincided with him in judgment. This is the sixth case of high treason that has occurred within the last four years, and upon all the five former, though he was equally confident, yet in every case the jury found no difficulty in arriving at a contrary opinion." Whatever shade of discredit such repeated failures may have cast upon the judicious caution and forbearance of Sir John Scott, his motives, pure, patriotic, and high-minded, appear to have com-

manded universal respect, and he seems himself to have rested content with the admission that each case was one fit to be submitted to the investigation of a jury. We rarely read of a criminal proceeding without some accompanying compliment from the judge and prisoner's counsel to his manly bearing, his candour, and disimpassioned conduct; nor can we finish any of his addresses without being satisfied of his sincerity, when he said, "No man in England entertains a more sovereign contempt than myself for the making an eloquent speech on an occasion like the present. The duty of a counsel for the prosecution consists in stating facts fairly to the jury, and reasoning with candour on those facts. God Almighty forbid that I should press this matter against the defendant further than sound justice and equity require." * A pleasing trait of gentleness and self-command was exhibited in the trial of O'Connor, when Mr. Ferguson interrupted a remark in the course of his speech, with the petulant rudeness, "That is a gross misrepresentation:" Sir John Scott paused, calmly explained the perfect accuracy of his statement, and then added in an even tone: "I excuse Mr. Ferguson, because when I had the good fortune to be as young as he is, I was as impatient." On one occasion only, the trial of the Rev. Gilbert Wakefield, does this deference to the motives of the Attorney-General appear to have received a rough shock. That intemperate scholar, being prosecuted for a libel on the Bishop of Llandaff, defended himself in person, and displayed even more than the theological acerbity which reverend defendants, when they stand in full canonicals on the floor of the court, are wont to exhibit.

"As the philosopher of old said to his offending slave, 'If I were not in a passion I would chastise thee;' my accuser might say with some plausibility of reason, 'If I were not Attorney-General, and especially if I did not expect to be something more than Attorney-General, I would prosecute this pamphlet.' I consider his speech the wretched babbling of one blinded by education or corrupted by his office. I have not read in the monuments of Attic genius that the

* Prosecution of D. I. Eaton for a seditious libel.

Macedonian Attorney-General filed an information of scurrility and lies against the philosopher of Stagyra." In another part of his pedantic defence Mr. Wakefield observed with more point, — "They" (looking at Lord Kenyon) — "they stone the martyr, and you, Sir John Scott, you hold the clothes." But the scholar's violence met with no sympathy from an indignant Court and a yawning jury; and it was only in prison that he recovered his good humour, having received a subscription of 5000*l.* to compensate for a harsh sentence, and wrote a letter of thanks to Sir John Scott for having provided him with such a noble foundation for an annuity.

But whilst we bear our willing tribute of praise to the admirable conduct of the Attorney-General in the progress of the state trials, we cannot refrain from hinting a suspicion that some of them might have been safely dispensed with. On seditious libels, in particular, he seems to have looked with an eye somewhat bloodshot, and to have wholly differed with the republican soldier in his fearless notion, "if my government is made to stand, it has nothing to fear from paper shot." There is the notable case of Frost, which goes far to prove the justice of this animadversion. This gentleman had been at an agricultural dinner, and having occasion to pass through the coffee-room on his way out in the evening, shouted in a tone of drunken defiance, "I am for equality." "What do you mean by that?" exclaimed fiercely some dozen loyal voices. "I mean," he retorted, "no king: the constitution of this kingdom is a bad one." For this vulgar insolence he deserved to have been speedily and unceremoniously ejected, but scarcely to have fallen within the fangs of a state prosecution. The words were spoken at a fearful time, November 1792, and the court and jury seem at the trial to have scarcely recovered from the effects of panic. In vain did Erskine inveigh against the misery and disgrace of society under the lash of informers running before the law, and hunting men through the privacies of domestic life — in vain declared that the humane policy of the law disdained to enter our closets without a warrant founded on complaint. The jury at once without pausing found the defendant guilty, and the court, under some excite-

ment one would think, pronounced its judgment, that for these seditious words he should be imprisoned six months in Newgate, should stand in the pillory, find sureties for his good behaviour for five years, and (being an attorney) should be struck off the rolls.

Whatever the misgivings of others might have been on his unsheathing the sword of the law so frequently, Sir John Scott never felt any compunctious visitings himself for the supposed excess; but always spoke of his official conduct with the complacent bearing of one who knew that he had done the state some service—that he had performed his duty, and no more. "His predecessor," he declared in a tone of triumph, "had in 1793 handed over to him many prosecutions that had been begun, and which he was left to carry on. He not only proceeded in those that were commenced, but instituted many fresh ones. No one, he believed, had ever instituted so many prosecutions for libels. In the years 1794 and 1795 no one, he apprehended, would say he was sparing of the power he then possessed: he should be glad to hear some kind-hearted individual maintain that proposition, for never, he believed, was any one more abused than himself at that period for the prosecutions which he instituted. Personal abuse, however, he never heeded when levelled against him for the discharge of what he considered his duty. He had never in the course of his life sought to promote or repress the circulation of any publication concerning himself. He cared not twopence for one of them, but libels that affected the constitution and government were of a different description. The number of these poisons was equal to their virulence. It was not unusual to see the wares of useful trades exposed to sale on one side of a shop and libels on the other. Let gentlemen only walk down the Strand, and in shops of the most public resort, see what innumerable seditious pamphlets were openly held out to sale. In the last two years there were more prosecutions for libels than in any twenty years before. If all were punished, there were many men, whose lives, if protracted to the greatest extent of human longevity, would not see the end of their punishments."

Whether or not a wise and humane system of policy would

have adopted this war of extermination against the herd of libellers, will be always a moot question, and open to much conflict of opinion. Having escaped the danger, the bands of conspirators being routed, and the spirit of mischief laid at rest, it is not impossible that we may scrutinize with too jealous caution those vindictive measures, that were deemed necessary by statesmen best acquainted with the exigencies of the times, and for some few of which necessity, the tyrant's plea, will afford the best justification.

That Sir John Scott acted conscientiously there can be no doubt. Of his readiness to resign office, rather than swerve a hair's breadth from the nicest principles of honour, there is a remarkable instance not generally known.* Immediately on the rupture between Pitt and Lord Thurlow, the premier communicated to the Solicitor General his interview with the king, and the chancellor's dismissal, expressing his wish to be himself the first bearer of the intelligence, and his anxious hope that the circumstance would make no difference in their mutual relation to each other. Sir John Scott replied that he was under greater obligations to Lord Thurlow than any other man living — that he could not retain office under an administration to which that nobleman was opposed; but that, as his own political principles accorded entirely with those of the government, he should resign at once his situation and seat in parliament. The prime minister combated this resolution warmly, and at length extorted a promise that he would confer with Lord Thurlow before taking these decisive steps. The ex-chancellor deprecated his resignation with equal ardour, saying that "against Pitt, personally, he had no complaint to make. He had tripped up his heels, indeed, and he would have tripped up his rival's, if he could; but he had never thought the king would have parted with him so easily. His course was done, and for the future he should remain neutral; but his young friend should on no account resign. He would not listen for a moment to such an idea; they would look like a couple of fools! His promotion was certain, and should not be

* From the information of Mr. Pensam.

baulked by any such whimsical proceeding." Sir John Scott acquiesced in the reasoning of the old peer, and continued Solicitor.

The time had now arrived when this prophecy was to be fulfilled. On the death of Sir James Eyre, in July 1799, he was raised to the peerage, as Baron Eldon, of Eldon, in the county of Durham, and appointed to the vacant office of Chief Justice of the Common Pleas, the calm and dignified appointment which he had always coveted above any other judicial seat, but which, in less than two years, he was compelled to abandon — exalted still higher, to use the witty illustration of a future chancellor, "like the man in a balloon with an upward tendency not communicated by himself." No less inducement than the express and reiterated commands of his sovereign could have removed Lord Eldon from this pleasant resting-place, which suited exactly his private feelings. To all the requisites for a consummate judge; — a subtle and refined understanding — an extraordinary degree of penetration and sagacity — a memory stored with cases — a learning most accurate in principles, and a singular circumspection — "he yet could add an honour — a great patience." By universal assent he was admitted to be the pleasantest chief justice ever known; subduing with mild dignity the most turbulent brother serjeant, conducting himself to the youngest barrister as if he were on habits of personal friendship, and conveying to the least persuasive advocate, by his mode of listening, that he was showing him a particular preference. His amenity of manners comprehended all within the verge of the court, and popularized the gravity of the judge. He used to shake with both hands the respectable old solicitors, and would chat with the jurymen on the state of the crops, as familiarly as if he had been their landlord. Even an enemy could not write against him, without confessing, "That which beauty is to woman, according to Anacreon, courtesy is, according to every body, to Lord Eldon — for armour of all sorts, offensive as well as defensive, a most matchless substitute. This keeps every one in good humour, from my lord duke down to the barrister's servant-clerk. This one politico-judicial virtue his lordship

has, which in his noble and learned bosom has swelled to so vast a magnitude, that like Aaron's serpent-rod it shows as if it had swallowed up all the rest. Beyond all controversy recognised not less by adversaries than by dependants: useful here, useful there, useful every where. Of all places, it is in the cabinet that it does knight's service. It is the court sticking-plaster, which, even when it fails to heal, keeps covered all solutions of continuity; it is the grand imperial cement, which preserves political corruption."*

* J. Bentham's Indications.

CHAPTER IX.

THE LIFE OF LORD ELDON CONTINUED.

In the spring of 1801, on the retirement of Mr. Pitt's administration, Lord Eldon, against his own wishes, but in compliance with the request of the King, was compelled to enlarge his sphere of usefulness, and to kiss the royal hand as Lord High Chancellor of England. He resigned the great seal on the 7th of February, 1806, when "All the Talents" rushed into power. He was re-appointed, after an interval of scarcely more than a long vacation, April 1. 1807, from which time he continued in office until April 30. 1827, being altogether a period of nearly twenty-five years, a longer dynasty than was enjoyed by any of his predecessors; so long indeed and complete as to be called in derision by Jeremy Bentham, "The reign of John the Second," and to have been calculated to exceed the average length of the reigns of the kings of England since the Conquest. As he surpassed the most fortunate of former chancellors in the duration, so it may be said with truth that he equalled the wisest and most learned of them in the performance, of his duties. The most accomplished equity judge that, with probably one exception, ever sat, he brought to the discharge of his high functions the profound, accurate, and extensive learning of Nottingham; the calm composure and equable temperament of Somers; the bland address and courtly manners of Talbot; the patient research and laborious assiduity of Hardwicke: and he might have challenged their combined excellence had he fortunately possessed one other quality, the bold decision of Thurlow. His judgments, which, with the cases relating to them, occupy upwards of thirty volumes, can only be appreciated by thorough lawyers. But, in the opinion of all most competent to decide, they display a most subtle, keen, and discriminating mind, a most careful balancing of doubtful authorities, the most judicious distinc-

tions between jarring cases, and an elaborate exposition of principles, worthy of the greatest judge in an age abounding with legal greatness. Of the imperturbable attention which he paid to all suits, small as well as great, of the impartiality which he dealt with every case rigidly according to its merits, of that absolute integrity which made the lawyer on the bench a distinct character from the statesman in the cabinet, all parties unite to speak in praise. To apply to him the beautiful comparison addressed by Horace Walpole to Lord Somers, "He was like a chapel in a palace, pure and holy, when all around was corruption and folly." We shall proceed to pick up the few weeds that may be found in its courts; to point out the flaw that may possibly be detected in the marble; to consider, in short, and examine the imperfections that have been imputed to him by political enemies or jealous professional critics. Their censures dwelt chiefly on the delays, and expenses consequent on the delays, of his court; on his overpatience and hesitation and doubt; on the excessive caution of his judgments, confined far too strictly to the decision of special matters; on the abuse of his extraordinary powers regarding the writ of injunction; on his neglect in reforming the defects of his court; and on the faulty distribution of his patronage.

The law's delay, especially with reference to the Court of Chancery, has been a complaint ever since England has had law, repeated in each succeeding generation by those who forget the necessity of the forms in which justice is slowly, in order to be safely, administered; the passion and pertinacity of suitors in defending rights or in inflicting wrongs; the indolence, ignorance, or chicanery of practitioners, and the complication of the kind of cases which become subjects of equity.* In the days of the Commonwealth—of William the Third—of Queen Anne—of George the Second—equally grievous complaints were made of delay, of men's rights unreasonably and unnecessarily delayed, against Commissioners Fiennes and Whitelocke, against Somers, Cowper, and Hardwicke. This last mentioned, and greatest of Lord Eldon's

* Quarterly Review for October, 1823.

predecessors, is inveighed against by the Pamphleteer for his doubt and procrastination. "Will you be hung up," he writes to the suitor, "six or eight years in Chancery, till your person by vexation is emaciated like a skeleton in the study of a physician, or an anatomy in the office of a surgeon?" When Lord Eldon had passed the fifth part of a century in office, and made no sign of retiring, letters of marque were issued by the Whig opposition to burn, sink, and destroy the old first-rate that lay so obstinately in the very mouth of the harbour, and obstructed their entrance. In the motions brought forward session after session by Mr. M. A. Taylor, Mr. Williams, and other lawyers, the burden of their accusatory strain was that justice delayed, and by delay incumbered with an increasing and overwhelming cost, had become at length hardly worth obtaining. Inheritances had lost half their value, by being bound with the chains of suits: ghosts of litigants unlaid by adjudication, it was rhetorically alleged, haunted the houses of their children from generation to generation. Mr. Denman spoke of the spectre-like forms of the suitors that were daily moving about the Court of Chancery, —miserable, heart-wearied, heart-broken, their hopes blasted and their fortunes squandered, proving the description of Spenser to be no exaggeration:—

> "Full little knowest thou that has not tried,
> What hell it is in suing long to bide;—
> To lose good days that might be better spent,
> To waste long nights in pensive discontent,
> To speed to-day, to be put back to-morrow,
> To feed on hope, to pine with fear and sorrow,
> To fret the soul with crosses and with cares,
> To eat the heart thro' comfortless despairs."

Six cases of delay, selected from a single office, partly by choice and partly by necessity, that of Mr. Lowe in Southampton Buildings, excited much attention*,—one case especially, of Ware v. Horwood. From the affidavit of the plaintiff's solicitor and the bill of costs, it appeared that the cause had been commenced upwards of twenty years before; that the charge by the solicitor for attendances alone amounted to

* Details of the Court of Chancery, in Hansard, 18th May, 1825.

1400*l.* and more; that the cause had been in his lordship's paper and out of it, up and down, till the patience of the solicitor being fairly worn out, he conceived the following new and somewhat enterprising expedient. He resolved to write to the Lord Chancellor, and did so in these words:— "Ware v. Horwood and Rugersh v. Harmington. My lord, —My clients have great reason to complain of the great injury suffered by them in consequence of these causes not keeping their station at the head of your lordship's paper, agreeably to your lordship's order, repeatedly given in my hearing. It is now nearly seven years since they have been waiting for your lordship's judgment, and upwards of twenty-two years ago they had arrived at the top of the paper, at which place I humbly entreat they may, until you can decide upon them, remain. There is a fund of 10,000*l.* and upwards locked up in court until your lordship decides in these causes, and it is therefore matter of great importance to my unfortunate clients that your lordship's decision may not be delayed by the circumstances to which I have above alluded. It is painful to me to state to your lordship that I have learnt, from authority which I have no reason to doubt, that the infant for whose benefit these suits were instituted twenty years ago died of a broken heart, on account of being kept out of his property, and that I have to contend against the bitter feelings of his relations. Under these distressing circumstances, knowing that your lordship will pardon the liberty I have taken in thus addressing you, and which nothing but the imperious necessity of the case would have induced me to have done, I have the honour, &c."

The scheme, bold as it was, had its effect. The solicitor was immediately sent for to the private room of the Chancellor; and attendances on his lordship upon this very singular and special mission were charged to the client in his bill of costs, one item of which runs in the following form: — "To attendance on his lordship in his private room, when his lordship begged for further indulgence till to-morrow!" The thing went on. His lordship, having begged and obtained a further respite, was at length as good as his word, and with the spur in his side made a decree.

The death of the infant appears to have been a point of stage effect, introduced by the canny Scot for the purpose of trying the strength of the Chancellor's nerves; the 10,000*l.* was in reality 134*l.*, and no more! But that such an astonishing liberty should have been taken and overlooked, — nay, that it should have been instantly acted on, betrayed a consciousness of infirmity which brought down upon the head of the hesitating judge a storm of patriotic invective. Had the Keeper of the Great Seal condescended to become a suitor to a solicitor of his own court, for the favour of a day's delay, and was such a favour graciously vouchsafed?* Could it be accounted for, except from a conviction of personal imputation being well founded, that the writer of such a letter was not instantly reprimanded, and with the utmost severity? The judge had previously expressed stern displeasure at the system of writing private letters, and had threatened to punish a repetition of the offence as a contempt of court. To conscious guilt alone was imputed his new posture of humiliation.

Another instance of delay was cited on oath by Mr. Leake, M. P., when examined before the commissioners for inquiring into chancery abuses. In a friendly suit, the sum at stake not being more than 2,500*l.*, the Chancellor declared, in November, 1816, that he would give judgment in a few days. The parties died, and, after three years, the solicitor for some of the representatives, becoming impatient, followed the precedent in the last case, and addressed to the Chancellor this short note: — "Erskine v. Gartshore. The solicitor for the representatives of the parties in the cause is desired on their behalf humbly to intreat the Lord Chancellor's judgment in the above cause. The subject matter in question came on to be heard before his lordship in the shape of exceptions to the Master's Report, on the 20th and 22nd November, 1816. — May 22nd, 1820." In two or three days the Chancellor returned the following answer: — "In the case of Erskine v. Gartshore the papers were long ago taken from my table. I have desired Mr. Hand to make due inquiry for them; and understanding from your note that I have been mistaken in supposing that that cause was arranged, as soon as I get the

* Edinburgh Review, October, 1825.

papers I will dispose of it. Yours, with much respect, Eldon." "I have only to add," said Mr. Leake, "that notwithstanding the promise contained in his lordship's note, the cause still stands for judgment in his paper, and is still undisposed of, — Aug. 3rd, 1825." The materials for judgment were gone: the papers could never be recovered.

The last case we shall select, and those have been carefully cited which appear to bear hardest on the Chancellor, was one brought forward by Mr. (now Lord) Denman, the case of Collis v. Nott, the decision of which turned on the question whether a surety, paying off a bond and not taking an assignment, could claim as a specialty or a simple contract creditor. The Master decided for the specialty, and in 1817 the point was argued by the late Sir S. Romilly. In Hilary Term, 1824, when the Chancellor was pressed for a decision, he had entirely forgotten it. The case was then re-argued at considerable length and expense to the parties, and was still in 1825 undecided.

It would be untrue to assert, after these examples, that Lord Eldon escaped this fiery ordeal of parliamentary inquiry without the smell of fire having passed upon him. But those would form a most mistaken and exaggerated idea of his dilatoriness — of the fault which Lord Bacon admitted against himself, "his being inclined to the cunctative" — who should imagine that these isolated cases (the rest admitted of and received explanation), invidiously selected from such a number of years, afford a fair specimen of his habits of indecision. Had they not been singular exceptions to the Chancellor's practice, the popular voice would have been raised in tones of indignation too loud to be hushed; a judgment vexatiously delayed or forgotten being almost as cruel on the poor suitor as if it were erroneous. But the remark of the gruff Lord Thurlow applied with as much truth to the state of the Court of Chancery at this time as in his own: — "I hear no complaints of delays," said that stout old peer, "but from persons who have been themselves the cause." "Regard being had," (to use the Chancellor's well-known habitual expression) to the nature of the suits and the circumstances of parties, no accurate judgment can be formed from a few individual in-

stances, unless at the same time the temper and objects of the parties interested in the suit be known, and the skill, activity, and honesty of their respective agents be sufficiently tested. In the two last cases cited the papers may have been wilfully removed, and the Chancellor purposely misled; though he cannot himself escape all inculpation for taking the papers home, and thus giving an opportunity for error and mistake. From this procrastinating habit of taking papers home, which grew upon him in his "chair days," arose the chance of their being lost or mislaid — of the judgment being forgotten or vexatiously suspended. "It is desirable," says the shrewd author of The Statesman, "to act upon a paper or bundle whilst it looks fresh, for it will become uninteresting, if the eye have got accustomed to it lying aside, and absolutely repulsive if it have assumed a dusty, obsolete, and often-postponed appearance."*

The custom of deferring his decisions in causes till he had examined all the papers relating to them at his own house, originated, as Lord Eldon himself declared, in a sense of duty, not only obliging him to look into the cases cited at the bar, but to satisfy his own mind in his closet that the whole subject matter bearing on the case had been exhausted. He never made a parade of authorities, as judges of little learning have very cheaply done, but contented himself with giving the results in the most quiet and unostentatious manner. With increase of years there grew up habits of hesitation and timidity, to which Lord Erskine once gracefully alluded in the House of Lords, and the compliment came from him with peculiar propriety: — "My noble and learned friend, with great good nature and pleasantry, frequently alludes to his supposed propensity to doubting, and I can account for that propensity more distinctly than it would be decent for him in speaking of himself. No man I believe who has sat in the court where he presides ever brought to the public service a more consummate knowledge of all its principles and practice. Nobody could be better qualified to decide in that forum with rapidity, yet how often does he there pause and re-pause — consider and re-consider

* Taylor's Statesman.

— and why? From the justest and most amiable of motives. He even runs the risk of sometimes appearing dilatory and undecided, rather than mistake the rights of the meanest individual in the most inconsiderable concerns whose interests are in his hands." The same motive was urged in justification by Lord Eldon himself in one of the last public discussions on this inexhaustible theme. "His judicial life had been already too long, but when the termination of his natural life arrived — the time was fast approaching when his natural life must terminate — that degree of caution which was called doubt and hesitation would be his greatest comfort, because by means of that caution he had reversed decrees, and prevented the injustice of A. keeping possession of property which of right belonged to B." In the earlier part of his judicial life the Chancellor's delay appears to have been very much exaggerated by common report. There is a wicked story in circulation about his deferring his judgment so long in a case respecting foreign fruit, that the counsel told his lordship they would not trouble him further, as the fruit was all spoilt and thrown into the sea. But in fact the judgment was given upon hearing the demurrer (Cousins v. Smith, 13 Vesey, 542); and a most valuable judgment it is, The fruit had been sold and consumed before any litigation arose upon the price; and the question in Chancery was, whether an injunction should issue to stay an action.

Suitors might begin to pray with reason for a more speedy decision, when the infirmities of three-score years and ten had overtaken the painstaking and timid judge, who always decided right, but towards the close of his judicial life took too much time to consider. His mind was so formed, and his industry and experience had been so great, that he was, perhaps, as well able to form an accurate judgment on a first view of the case as the deepest reflection could enable him to arrive at. Upon one occasion, in a case of very considerable importance, his lordship spoke for nearly two hours, and was listened to, as he always was, with the most marked attention by all the bar, including that great and eminent man, Sir Samuel Romilly; but he finished by saying that he would take home the papers, and read them carefully, and would

tell the parties on a future day what his judgment would be. Sir Samuel Romilly rose from his seat, and, turning round to the gentlemen behind him, said, "Now is not this extraordinary? I never heard a more satisfactory judgment; and yet the Chancellor cannot make up his mind. It is wonderful; and the more so, because, however long he takes to consider a case, I scarcely ever knew him to differ from his first impression." Nothing, however, more completely describes the beautiful integrity of his intentions than this. It was his peculiar gratification in retirement, to speak freely of the imputations which had been raised against him with feelings of conscientious satisfaction, and a declaration to those to whom his heart was really open, that all the virulence with which he had been attacked on the score of delay, weighed but as a feather in the balance against the blessed conviction in his own mind, that he had never decided a case until he had perfectly satisfied himself upon its real merits. Often after cases had been long argued before him, he would suggest some points upon which the whole question was found to turn, but which had been overlooked by the bar; and upon coming into court in the morning, it was no uncommon thing to hear him address the counsel in cases in which he had carried off the papers for examination, pointing out to them material facts which his acute investigation had discovered. But though productive of occasional good, the habit was attended with inconvenience, and exposed the Chancellor to obloquy not altogether misplaced.

That the arrears of business so much and loudly complained of were only in a very slight degree imputable to the man, has been proved since his resignation. The duties of the Chancellor may be reduced into four great classes: Bankruptcy, Lunacy, Chancery suits properly so called, and references to the Chancellor arising out of public and private acts of parliament. The present possessor of the great seal has been in a great measure relieved of the burden which the two first of these four great classes, bankruptcy and lunacy, threw on the shoulders of his great predecessor; and yet, with all his skill and ability, there was, till the appointment of two new Vice Chancellors, an arrear of nearly one thousand causes.

As a proof how greatly the amount of litigation must have been enlarged, it has been ascertained that the property of suitors has risen since the commencement of George the Third's reign from 4,700,000*l.* to above 33,000,000*l.* The number of counsel regularly practising at the Chancery bar had been swelled from fifteen or twenty, the select few when Mr. Scott joined the bar, to above eighty, and their speeches were protracted in the same proportion, the wind of equity lawyers being considered particularly good. Lord Eldon sat on the Berkeley peerage case thirty-four days, and on the Roxburgh peerage case thirty-six days, listening to the speeches of counsel almost as interminable as his patience. For the decision of appeals he also sat a greater number of days than any of his predecessors, the union with Ireland having added an abundant supply to this originally plentiful stock. To these perplexed and protracted cases the patient Chancellor attended "from morn to dewy eve," nay, sometimes from morning to night, never stopping an appeal however desperate soever it might be, with an excess of dogged perseverance which even put to shame the veteran practitioners of his court. Of this an interesting account is told in the Life of Mr. Wilberforce: —

"One of the most remarkable things about Romilly was, that, though he had such an immense quantity of business, he always seemed an idle man. If you had not known who and what he was, you would have said, 'He is a remarkably gentlemanlike pleasant man; I suppose, poor fellow! he has no business;' for he would stand at the bar of the House and chat with you, and talk over the last novel, with which he was as well acquainted as if he had nothing else to think about. Once indeed I remember coming to speak with him in court, and seeing him look fagged, and with an immense pile of papers before him. This was at a time when Lord Eldon having been reproached for having left business undischarged, had declared that he would get through all arrears by sitting on until the business was done. As I went up to Romilly, Lord Eldon saw me, and beckoned to me with as much cheerfulness and gaiety as possible. When I was alone with Romilly, and asked him how he was, he answered, 'I am

worn to death, here have we been sitting on in the vacation from nine in the morning until four, and when I leave this place I have to read through all my papers to be ready for to-morrow morning; but the most extraordinary part of all is, that Eldon, who has not only mine but all the other business to go through, is just as cheerful and untired as ever.'"*

On the value of Lord Eldon's judgments, though sometimes too tardily pronounced, it would be superfluous to enlarge. The grammarian or rhetorician may find fault with the structure of the sentences; the worthy judge himself, a bad judge of style, found fault with the reporters for reducing to some limit their excessive length; but those sentences the real property lawyer will fix in his memory, and disregard, as much as their author, the want of point and drapery. The worth of some few may be impaired by leaving the question with which the court had to grapple in abeyance, or by keeping too closely to minute details and their practical application. But in reviewing his decisions, we should remember that he who comes latest has, as to general principles, nothing to invent and little to add; that he has the less brilliant though more difficult task of distinguishing the effect of those principles, of reconciling the ever-growing variety of precedents, and of guarding the application of old principles and precedents to a new cause from any doubt as to the precise points to which such authorities are applied.† Lords Nottingham and Hardwicke may be considered the fountains of equity law; it was reserved for Lord Eldon to illustrate them both, as Coke illustrated Littleton, by the admirable commentaries he has pronounced on the decisions of his predecessors.

The following pungent criticism on the style and spirit of these commentaries has been since materially qualified by the writer, but deserves insertion for its talent, and contains every thing that can be said in the way of disparagement.—(*Edinb. Review*, 1825.)

"It would be difficult to deny that he more frequently gave proof of caution than of boldness—of subtlety than of vigour in his reasonings—that in the determination of particular

* Wilberforce's Life, vol. iii.

† Quarterly Review, vol. xxxviii.

cases, he seems too often to exercise his ingenuity in raising up doubts and difficulties, rather than in clearing them away, and above all, that he confines himself far too rigidly to the decision of the special matters that come before him, without the establishment either of general principles, and the improvement of the science he professes, or aiming at the correction of those vices in the constitution or administration of his court, of which he daily hears and sees too much to make it conceivable that he should be ignorant. If driven to toil in that laboratory, Vesey junior's Reports, comprised within the very moderate space of eighteen volumes octavo, we shall find a tortuous and mazy involution, parenthesis suffocated by parenthesis, a profuse, inelegant, and cumbrous verbiage, which afflict the reader with a sense of obscurity, and a most painful image of labour at once interminable and unproductive. Examples may be selected in abundance of a dissection of facts, ingenious, skilful, subtle in the extreme, and of a most cautious balancing and learned discussion of preceding authorities, implying a suspicion of their correctness, and casting a doubt alike over them and the decision which is about to be pronounced. But of a clear, unreserved, definite exhibition of general principles, and of what the law is, the faithful mirror of Vesey holds up no portrait, because the original does not exist. Lord Eldon's decisions will be of admirable weight and authority, when the Platonic year in its revolution shall have brought round, not merely the same precise state of facts, but the very same plaintiff and defendant, the same learned gentlemen to contest and defend their mutual interests, and to crown and complete all, the selfsame Lord Chancellor to decide. In the Reports, Lord Coke invites the attention of the inquirer to adjudications which took place beyond the mere decision of the point in issue between the parties, in his peculiar and somewhat grotesque manner. 'Note, reader, that the following points were settled and resolved.' Then follow seriatim, quite as a matter of course, conclusions and corollaries of law to the number of half a dozen and often more, as the case may be, distinctly and fearlessly laid down, and without one single parenthesis to pare them down and fritter them away to nothing. Where are

the Resolutions of Lord Eldon? In what part of those ample magazines of learning (bonding warehouses under double locks), will the painful and fainting student find any of his adjudications, which unequivocally enlarge, correct, or define the rules of equity in which he has been so long engaged? Why his decisions are absolutely the exclusion of all conclusion!"

How different from this warped criticism is the judgment of a more able and disinterested witness, Mr. Charles Butler! That learned, acute, and conscientious lawyer, in politics opposed to Lord Eldon, expressed himself as follows: —

"The reminiscent feels it is impossible to quit this subject (forensic eloquence) without paying his humble, but sincere tribute of admiration, to the noble earl who now presides in the Court of Chancery. In profound, extensive, and accurate knowledge of the principles of his court, and the rules of practice which regulate its proceedings — in complete recollection and just appreciation of former decisions — in discerning the inferences to be justly drawn from them — in the power of instantaneously applying his immense theoretical and practical knowledge to the business immediately before the court — in perceiving almost with intuitive readiness, on the first opening of the case, its real state, and the ultimate conclusion of equity upon it, yet investigating it with the most conscientious, most minute, and most edifying industry; in all or in any of these requisites for a due discharge of his high office, Lord Eldon, if he has been equalled, has assuredly never been surpassed by any of his predecessors. He has other merits; he has often suppressed popular clamour, yet he has always been popular; but, to use the words of Lord Mansfield, it has been that popularity which follows, not that which is run after. He has almost always supported administration, but has never been subservient to any minister; and among those, who by dignity of character attach public opinion to the British Government, and thus secure its stability, his lordship is universally allowed to be eminently conspicuous. On all this there is no dissentient voice; all which these lines have expressed, or attempted to express, the reminiscent has heard often and much better said by the late Sir Samuel Romilly, both in public and private."

Testimony goes no higher.

Shortly after its publication, Lord Eldon addressed to the author the following letter: —

"DEAR SIR, April 19th, 1822.

"Seeing your Reminiscences offered to the public, I have placed them in my library. I wish I could satisfy myself that Lord Eldon was entitled to all the approbation which your partiality has bestowed upon him. I have ventured to think that my life exhibits a remarkable proof of what may be done, in a free country, by moderate talents and never-ceasing industry; but I have never presumed to think that I had the merit you have been pleased to think it good to ascribe to me. I have felt more consolation than I can express in reading, in a part of your work, what a considerable person stated in answer to the imputation of being dilatory. That has been often, and I admit most fairly, imputed to me. To all who accuse me of it I wish to give, as my answer, the passage I allude to. I must soon quit this scene. Whether any memory of me will survive me, I know not. But I hope I may have descendants professing the law; and if I have, as they must study the works of Charles Butler, if they mean to understand their profession, those descendants at least will be taught to entertain, upon very considerable authority, a favourable opinion of the character of their ancestor.

"Yours, dear Sir,

"ELDON."

The passage referred to with so much pleasure is an anecdote of the Chancellor d'Aguesseau, related in Mr. Butler's work: —"The only fault imputed to D'Aguesseau was dilatoriness of decision: we should hear his own apology. The general feeling of the public on this head was once respectfully communicated to him by his son: — 'My child,' said the Chancellor, 'when you shall have read what I have read, seen what I have seen, and heard what I have heard, you will feel that if on any subject you know much, there may be also much that you do not know, and that something even of what you know may not at the moment be in your recollection. You will then, too, be sensible of the mischievous and often ruinous consequences of even a small error in a decision; and conscience, I trust, will then make you as doubtful, as timid,

and consequently as dilatory, as I am accused of being.'" Testimonies to the judicial merit of Lord Eldon are so common that the difficulty lies in selection. Perhaps that of Sir Samuel Romilly (himself one of the most learned and able of lawyers) is the highest in point of authority. He stated in the House of Commons, on the 7th of March, 1811, "that there never was a man in the Court of Chancery who more endeared himself to the bar, or exhibited more humane attention to the suitors. There never presided in that court a man of more deep and various learning in his profession; and in anxiety to do justice, that court had never seen, he would not say the superior, but the equal, of the Lord Chancellor. If he had a fault, it was an over-anxiety to do justice." The opinion of Sir Egerton Brydges, who had good opportunities of knowing what was the current feeling upon the subject, is also well worthy of being quoted: — "Of all who in the long lapse of ages have filled the sacred seat on which he now sits, none ever had purer hands — none ever had a more conscientious desire of equity, more ardent and more incessant, than Lord Eldon. The amazing expanse of his views, the inexpressible niceness of his discrimination, his unrelaxing anxiety to do justice in every individual case, the kindness of his heart, and the ductility of his ideas, all insure that attention to every suitor, which must necessarily obtain the unbounded admiration and attachment of the virtuous and the wise. If there are those to whose interests a more expeditious, more rash and venturous, and less sparing mode of despatching the decisions of the Court would be more consonant, it only shows that in this frail world there are men to whom a more sublime virtue is less pleasing than a coarser or more common-place and unfeeling line of conduct." *

We proceed to consider the remaining charges brought against Lord Eldon, with reference to his alleged abuse of his special power and patronage.

The jurisdiction which the Court of Chancery exercises in controlling the legal rights of fathers over their children, is a species of delegated authority residing in the king as *parens*

* An admirable *resumé* of Lord Eldon's judicial merits is contained in the third, fourth, and fifth numbers of the Law Review.

patriæ, and transferred to that Court from its representing his parental character. This extraordinary power, enlarged by degrees to meet the wants of infant wards, would have been inconsistent and defective, had it only applied to the protection of orphans, or had thrown a shield over their property, and not over their persons. That a jurisdiction of such a peculiar nature should be exercised with the most extreme caution, on account of the delicate and sacred character of the ties which it severs, is a proposition no less clear than that Lord Eldon never interfered but with pain and scrupulous care. His interposition, however, even on rare occasions excited a great clamour, that, under pretence of heterodoxy and immoral conduct, he was seeking by an *ex post facto* law to deprive parents of the guardianship of their own children. The cases to which public attention and sympathy appear to have been most directed, were those of Mr. Percy Bysshe Shelley, the unhappy poet, and Mr. Long Wellesley. In 1817, the Chancellor decided that Mr. Shelley could not be entrusted with the care of his own children, on the ground of his avowed atheistical principles and profligate habits. A petition had been presented on behalf of the infants, stating that the father had deserted his wife and cohabited with another woman, had published a book denying the existence of God as Creator of the universe, and had demanded that the children should be given up to him. Lord Eldon gave his judgment in writing (Shelley v. Westbrooke, Jacob, 266): —"I shall studiously forbear in this case, because it is unnecessary, to state in my judgment what this Court might or might not be authorized to do in the exercise of its jurisdiction, upon the ground of the probable effect of a father's principles, of any nature whatever, upon the education of his children, where such principles have not yet been called into activity or manifested in such conduct in life as this Court upon such an occasion as the present would be bound to attend to. This is a case in which, as the matter appears to me, the father's principles cannot be misunderstood; in which his conduct, which I cannot but consider as highly immoral, has been established, and established as the effect of those principles: conduct, nevertheless, which he represents to himself and others, not as conduct to

be considered as immoral, but to be recommended and observed in practice as worthy of approbation. I consider this, therefore, as a case in which the father has demonstrated that he must and does deem it to be matter of duty, which his principles impose upon him, to recommend to those whose opinions and habits he may take upon himself to form, that conduct in some of the most important relations of life, as moral and virtuous, which the law calls upon me to consider as immoral and vicious; conduct which the law animadverts upon as inconsistent with the duties of persons in such relations of life, and which it considers as injuriously affecting both the interests of such persons, and those of the community." The order restrained the father and his agents from taking possession of the persons of the infants.

Some years later the Chancellor felt himself compelled, notwithstanding much obloquy, and from the rank of the party some attempts at intimidation, to put in force his invidious *surveillance* in the case of Mr. Wellesley, under circumstances strange as fiction and sad as tragedy. In the spring of 1812, this gentleman had married an heiress, Miss Catherine Pole Tylney Long, possessing a fortune of 40,000*l.* a year and with considerable personal attractions. Three children, plaintiffs in the cause, were the issue of the marriage. Though he had a life interest in three-fourths of this superb income and the power of charging the estates with 100,000*l.* by way of mortgage, he squandered it all in folly, and in 1821 was compelled to take refuge on the Continent from his embarrassments. His poor wife accompanied the ungrateful spendthrift, who had not even the humanity to treat her with the show of kindness and respect. The victim of his misconduct, she was compelled, in June 1825, to institute proceedings in the ecclesiastical courts for a divorce, had to fly from her house in dread of an interview with the man to whom she had given all, and shortly afterwards sunk into an untimely grave, having with her dying breath enjoined her sisters to resist every attempt to remove the children, whom she had made wards in Chancery. Mr. Wellesley urged repeated applications to the Misses Long for the custody of them, but in vain. In October 1825, he caused a writ of habeas corpus to be served on their solicitor, to

obtain possession of the persons of the infants, but proceedings were stayed in consequence of his having no home in England. Having returned to settle in this country in January 1826, he filed a bill, praying that the Misses Long might forthwith, on a day to be named, deliver over the infants to the care and guidance of their father. A counter-petition was presented on their behalf, and a vast mass of affidavits filed in its support. They stated that his demeanor to his wife had been harsh and brutal, though she laboured under a disease in which mental agitation was highly dangerous: that he was in the habit of swearing and using obscene language in the presence of his children; nay more, that he had caused the girl to learn to repeat indecent words and the most vulgar oaths. A letter from him to the tutor of his son was read, in which he stated that a man and his children ought to be allowed to go to the devil in their own way if he pleased (his own peculiar notion of the law); and another to his son, containing this piece of paternal counsel: "I have nothing to do with your mystic rites with Mr. Pitman (his tutor), they are too sacred; study hard, but as soon as you have completed your tasks, go out in all weathers and play hell and Tommy; make as much riot as your tongues can admit; chase cats, dogs, and women, old and young, but spare my game." Mr. Wellesley's counsel contended, with much pertinacity, that the Court never had interfered under circumstances similar to those which were alleged to exist in their client's singular case; urged that the general tenor of the letters was such as no father need be ashamed of, and warmly demanded to know where it was said that, if a father commit adultery, that Court would take his children from him? — Who was safe if the Court could interfere in such a case? — if, in order to determine whether it ought to interfere, it would encourage an inquisitorial scrutiny into the details of private life?

The judgment of Lord Eldon forms the best and most ample apology for his decision, and would not have disgraced a Somers or a D'Aguesseau. Eloquent it may not have been, in the highest sense of the term; Lord Eldon always entertained an opinion that judges should not be eloquent; but the sentiments of a learned and righteous judge were con-

tained in it, and its principles were too well founded in equity to be shaken by appeal. What spectator can ever forget the impression that its delivery produced on a crowded court! given in those clear, soft, articulate, yet almost feeble tones, whose lowest whisper was audible amid the stillness that prevailed. The "old man eloquent" — with the language of feeling at least — referred to the pile of affidavits heaped beside him apparently without effort, and his voice shook more with emotion than with age, as he deprecated the delivering up the little girl, Victoria, to the custody of an infamous woman. The following has been selected as a short but interesting portion of this valuable judgment, and is most faithfully, even to the very words, reported in Russell, vol. ii. p. 1.

"Matters of so much delicacy should have been heard in private; but if the parties choose to have them discussed in public, I know that it is one of the best securities for the honest exercise of a judge's duty, that he is to discharge that duty in public. That duty I will discharge as well as I can; recollecting, that what I am called upon to do is a strong measure; that the interposition of this court stands upon principles which it ought not to put in operation without keeping in view all the feelings of a parent's heart, and all the principles of common law with respect to a parent's rights; and that though the court has interposed in many instances of the sort, the application is one of the most serious and important nature. It has not been doubted at the bar, that this jurisdiction belongs to the court and to the individual who sits in it. It is absolutely necessary that such a jurisdiction should exist, subject to correction by appeal, and subject to the most scrupulous and conscientious conviction of the judge, that he is to look most strictly into the merits of every case of the kind, and with the utmost anxiety to be right. This court has not the means of acting, except where it has property to act upon — not from any want of jurisdiction, but from a want of means to exercise its jurisdiction. Lord Macclesfield laid down the principle, that if he had a reasonable ground to suspect the children would not be properly treated, he would interfere, upon the principle that

preventing justice was preferable to punishing justice. Has Lord Macclesfield's doctrine been followed up? Lord Bathurst made an order to prevent a Protestant child from being sent to a Roman Catholic school. This court, with reference to the distinction between Protestant and Roman Catholic children, interfered then in the education of children in many cases in which it would not interfere now. The courts of law can enforce the rights of a father, but they are not equal to the office of enforcing the duties of the father.* Those duties have been acknowledged in this his majesty's court for centuries past. I am not aware of any case in which this court, where it has taken away from the father the care and custody of the children, has called in aid of their own means the property of the father. Looking, however, to a moral and religious education, as the foundation of all that is valuable here, or is to be hoped for hereafter, I cannot put pecuniary considerations in the balance with the imperious duty imposed upon me to take care that these children shall have a moral and religious education. . . . . I come now to consider the nature of the case itself. The adultery has been carried on in the most shameless manner—in a manner so disgraceful to Mrs. Bligh, that I do declare that I ought to be hunted out of society if I hesitated for one moment to say, that I would sooner forfeit my life than permit the girl, Victoria, to go into the company of such a woman, or into the care and protection of a man who had the slightest connection with that woman." After reviewing the painful facts disclosed in the affidavits, the Chancellor concluded:—"Under these circumstances, I can never suffer the daughter to go under the care and custody of Mr. Wellesley, so long as there is any connection between him and a woman so abandoned as Mrs. Bligh appears to be. I cannot consent to separate the boys from the daughter, and upon this point I have the authority of Mr. Wellesley himself to say that this is a thing which ought not to be done. When I look at the whole conduct of Mr. Wellesley towards Mrs. Bligh, towards his children, and with reference to other points, which show the tenor and

* The original, probably, of Mr. Drummond's epigrammatic saying, that property has its duties as well as its rights.

bent of his mind upon certain subjects, and the nature of his sentiments, I say that if the House of Lords think proper to restore these children to Mr. Wellesley, let them do so: it shall not be done by my act. I therefore refer it to the Master to inquire under whose care and custody these children should be placed. Into whatever hands these children may fall, it will be their duty to consult the interests and happiness of the children, by allowing filial affection and duty towards their father to operate to the utmost"

A fierce war of pamphlets ensued, deprecating the judgment as one pregnant with danger, and full of grounds for apprehension, urging the inconvenience of investigating a father's general character, denying that an equity judge or his officers were to superintend such a scrutiny, and predicting that it would be made the instrument of private revenge and malicious annoyance. None of these evil consequences have followed: the special remedy only meant for extreme cases, and which no judge would willingly enforce, except on those very particular occasions which stand clearly and broadly apart from domestic and daily life, has not again been called for. Like the sword of the Temple, it has been laid aside, and hung up in salutary awe, but not unsheathed, since the determination of the appeal. After hearing Mr. Wellesley's counsel to an extraordinary length, the House of Lords confirmed the judgment; the then Chancellor (Lord Lyndhurst), Lord Redesdale and Lord Manners expressing an undoubted opinion as to the existence of the jurisdiction, and a clear conviction that the case submitted to them was one peculiarly fit for its exercise.

Whether Lord Eldon displayed equal discretion in reference to another part of this peculiar judicature, admits of greater doubt, though we cannot without hesitation and reluctance demur to any judgment of so consummate a lawyer; we allude to his refusal to protect the progeny of authors, and interfere by special injunction for the preservation of their rights. Notwithstanding the statute of Anne, an incumbrance rather than a defence to literature, the only real protection to property in printed works is an injunction in the Court of Chancery. The metes and bounds within

which Lord Eldon limited his interposition were laid down by himself in the following emphatic terms (Walcot v. Walker, 7 Vesey, p. 1.): — "It is the duty of the court to know whether an action at law would lie; for, if not, the court ought not to give an account of the unhallowed profit of libellous publications. If upon inspection the work appears innocent, I will act upon the submission to the answer; if criminal, I will not act at all; and if doubtful, I will send that question to law."

This determination of the Chancellor, first announced in Mr. Walcot's case in 1802, and refusing protection to the ribald buffooneries of Peter Pindar, excited but slight notice. His doubts, however, began to be gravely weighed and considered when they excommunicated Southey's Wat Tyler in 1817, and in the same year put Lord Byron's Cain under ban, and denounced the dangerous Lectures of Mr. Lawrence, the eminent surgeon, on Physiology. The case of Southey v. Sherwood and others*, derived an adventitious importance from the character of the justly esteemed plaintiff. An injunction had been granted ex parte, on a motion to restrain the defendants from printing, publishing, or selling the poem of Wat Tyler, on an affidavit of the plaintiff that in 1794, when he was a young man under twenty-one, he had composed the poem in question — had taken it to London, and placed it in the hands of Mr. Ridgway, an eminent bookseller there — that he had forgotten to demand back the MS., but had never assigned the copyright, nor received any remuneration for the same; and submitting that the defendant had no right to publish it without his consent or privity. On the hearing to dissolve this injunction, the Chancellor expressed a strong opinion against it. "An injunction," he said, "is granted to prevent the use of that which is the exclusive property of another. It is impossible that Mr. Southey could have forgotten his work (Lord Eldon had never composed a juvenile poem), there must have been some other reason. If a man leave a book of this description in the hands of a publisher, without assigning any satisfactory reason for doing so, and has not inquired about it during

* 2 Merivale, p. 435.

twenty-three years, he surely can have no right to complain of its being published at the end of that period. . . . Lord Chief Justice Eyre has expressly laid it down, that a person cannot recover in damages for a work which is in its nature calculated to do injury to the public. It is very true that in such cases my decision may operate so as to multiply copies of mischievous publications by the refusal of the court to interfere by restraining them; but to this my answer is, that sitting here as a judge upon a mere question of property, I have nothing to do with the nature of the property, nor with the conduct of the parties, except as it relates to their civil interests; and if the publication be mischievous either on the part of the author or of the book, it is not my business to interfere with it. On the special circumstances, it appears to me that I cannot grant this injunction until Mr. Southey shall have established his right to the property by an action." In the last case (Lawrence v. Smith, Jacob, 471.), the Chancellor, after repeating the grounds of his interference, proceeded: — "The defendant comes into court under singular circumstances. He says that the work which he as well as the plaintiff has published, is so wrong, so immoral in its nature, that it ought to have no protection. As this court has no jurisdiction in matters of crime, it has been said that if the injunction be refused, it has the effect of increasing the number of copies. The answer to that is, that I have nothing to do with it as a crime. The question relates only to a civil right of property. If the one party has that right, the other party must not invade it; if he has not that right, this court cannot give him the consequences that belong to it. Whether, if such a defence were made upon a trial at law, there might or might not be any proceedings of a different nature against both parties, is a question that I have nothing to do with; but the question is, whether it is so clear that the plaintiff has that civil right, that on that ground he is to have relief. If on reading the plaintiff's work I thought it clear that he had that right, I should feel it necessary to state the grounds of my opinion. But if I feel a rational doubt whether an action would lie, it will not

be necessary to go into the grounds of that doubt: it might perhaps prejudice the trial if I did."

By these decisions English literature was rendered subject to an indirect censorship of the press, by so much the worse than a direct one, as it is worse to be condemned by the doubt than by the judgment of a tribunal.* The dictum of Chief Justice Eyre, on which the Chancellor relied, was a mere obiter dictum, never acted upon, and contrary to the express authorities of great equity judges, Lord Nottingham and Lord Hardwicke, who held, that a doubtful right was quite sufficient to entitle the plaintiff to an injunction, a remedy which Lord Camden said must in its nature be sudden and summary to be granted, though the right is not clear but doubtful. Mr. Merivale, in a note to one of these reports, adds a MS. case before Lord Chancellor Parker, to restrain the selling of an English translation of the Archæologia Sacra. The then chief judge in equity declared that he had read this book in his study, and it contained strange notions. He would grant an injunction against its being published in English, in which language it might do much harm. He looked upon it this court had a superintendence over all books, and might in a summary way restrain the printing or publishing any that contained reflections on religion or morality. This declaration of Lord Macclesfield seems to have carried his authority too far, and future chancellors have interfered for the protection of publications whose tendency was more than questionable. Pope's Dunciad was protected as property by injunction, though the whole work, 'setting the flies in amber,' was one libel from beginning to end. In 1757, though the Lord Chamberlain had prohibited the representation of Gay's Polly, Lord Talbot gave it protection in the Court of Chancery. Hawkesworth's Voyages, Swift's works, indecent and libellous as they were, received protection, the law not being then too prudish to guard that as property, of which it has not the manliness to attempt the punishment as guilt. Upon the whole, we agree in the conclusion of the Edinburgh Reviewer: — "When by the defendant's own showing he can in no case be injured by the injunction, and

* Edinburgh Review.

the public, by the very terms of his defence, must derive from it an incidental benefit, this is the very last species of doubtful right for whose protection an injunction ought to be refused. Should Lord Eldon have occasion to review his own decision, he will find no authority but that of Lord Eldon which it will be necessary to overrule."

We fear, that with respect to the distribution of his patronage, there is also some ground for inculpating Lord Eldon.

In the highest departments of the church and law, his appointments were, with few and rare exceptions, not only unobjectionable but praiseworthy. At no period since the Reformation has the bench of bishops been sanctified by men of purer life and conversation, by prelates who have given nobler hostages to the cause of literature and religion. The heads of the law were in like manner distinguished for their felicitous selection, and though some puisné judge might perchance take his seat on the side cushion, when he would have consulted his dignity more by retiring from public life, the decisions of the common law courts in Lord Eldon's day will bear comparison with any preceding authorities. The Chancellor might proudly boast, that in his hands the purity of the lawn and ermine was unsullied. But it is notorious that to inferior stations in the law Lord Eldon did not appoint men of the greatest aptitude; that the fitness of the individual to discharge the duties of the office was often one of the last things that decided the Chancellor's choice. "It reflects no great credit," says Mr. Cooper, "on the discernment of those who have held the great seal, that the persons who are supposed to have owed their elevation solely to the Chancellor, have been infinitely more incompetent than those whose advancement was occasioned by political connection and influence." Some allowance may be fairly claimed for the 'pressure from without.' Lord Eldon once mentioned that a Mastership in Chancery having become vacant, he was one morning dressing himself, when a servant came to say there was a stranger in the drawing-room, who would not quit it till he had seen his master. His lordship said he would see him in his dressing-room. On his entering, Lord

Eldon was surprised to recognise the Prince Regent, who told him that he was sorry for Lady Eldon, as he would not leave the room till he had promised to make Jekyll a Master. The favourite was afterwards appointed; and indeed, unless the candidate had been notoriously unfit, Lord Eldon did not possess sufficient republican stubbornness to have refused such a suitor.

Whether honoured or not with royal and princely patronage, several of these Masters in Chancery are admitted by general consent to have been unequal to their important functions. One of them was a captain in the militia, who chanced to render the Chancellor an important service, and received this disproportionate reward.* It happened that on the evening of the 6th of March, Mr. Cross was passing near the residence of Lord Eldon, then the centre house on the east side of Bedford Square, when an anti-corn-law mob was beginning to attack it, under the supposition that its occupant was a supporter of the bill. Mindful of the preservation of an acquaintance whom he had met at the table of one of Lord Eldon's brothers, Mr. Cross, with a boldness and alacrity which reflected credit upon the captain of the Somersetshire militia, determined to relieve the garrison; and passing the lines of the besiegers, threw himself into the house. He there seized the treasures the chancellor most prized—Lady Eldon and the Great Seal,—and conveyed them safely, one on each arm, by the back of the house into the garden of the British Museum, just before the mob broke into the very room from which they had been withdrawn.

Five or six years afterwards, when a mastership in Chancery was vacant, Lady Eldon pressed upon her husband to remember this timely service; and Mr. Cross received the appointment. We have been assured that Lord Eldon at a later period said, "The only legal appointment which I regret having made is that of Frank Cross, and that Bessie got from me." Not, indeed, that we are aware that Mr. Cross proved entirely incompetent for the situation; but chiefly, that his professional standing did not justify the appointment, and

* From the valuable and interesting sketches of Lords Stowell and Eldon, by Mr. W. E. Surtees.

that his advancement could not be laid upon the importunity of political connection. That the ground of the regret was no diminution of regard for Mr. Cross there cannot be a stronger proof than the fact, that the earl afterwards* appointed him one of his executors. This was not, however, his only injudicious appointment. Some of the equity judges even, appointed after the passing of the vice chancellor's bill, sadly disappointed both the public and the profession. Parliamentary connection and private favour blighted the fairest, or forced the least genial, claims to preferment. "I have known a prince," was the observation of the shrewd Swift, "more than once elevate an able man, but I never observed that man to use his credit in the disposal of an employment to a person whom he thought the fittest for it. One of the greatest men in this age, Harley, owned and excused the matter, from the violence of parties, and the unreasonableness of friends." Unlike the good Barrington, Bishop of Durham, who reserved his golden stalls for the soundest polemics, and most classical scholars, Lord Eldon poured forth the crown livings in his gift with little personal discrimination. Like the rain and sunshine, they fell alike on the just and the unjust, on the undistinguished and deserving. In vain had some hard-working curate dedicated long years to an elaborate scriptural work or theological controversy; he found his chance of preferment at the end infinitely more precarious than that of younger sporting clergymen, who had the good luck to accompany the chancellor in his sporting excursions, and the address to give him the credit of most of the birds that were bagged. He seemed to regard literature as a light and worthless weed; and to consider those, whether clerical or lay, who went in quest of it as cast away on a barren and bleak shore. "My list is full; I am plagued to death with these livings," is said to have been no unusual, however ungracious, answer to the unfortunate petitioners who sought his study without the introduction of some powerful patron. With the exception of the Rev. T. Maurice, the author of Indian Antiquities, whom he presented to the vicarage of Cadham in Kent, and the Rev. Henry Phillpotts, now bishop of Exeter, to whom he gave his

* Surtees.

first little living, and the Rev. Christopher Benson, we know of scarcely any celebrated theologians or scholars whom the chancellor honoured with marks of favour. The tithe was small indeed; a scanty crop of anise and cummin, which Lord Eldon paid to literature. Though 'fed with dedications,' he seldom acknowledged the compliment with more than barren thanks: but for this abstinence who can blame him? The fashion of flattery in unmeaning prefaces, thus fortunately discouraged, seems fast dying away, and should have expired with the law Latin, in which its superlatives were both the best rounded and least generally understood.

Far from bribing the good word of lawyers by grants of peerages, by silk gowns, and snug appointments, Lord Eldon appears to have been sparing, even to parsimony, of such favours. During the long course of twenty years, when such liberal drafts were drawn on the peerage list, from the army, and navy, and diplomatic service, no lawyers, with the exceptions of Lord Ellenborough, who owed his appointment to Mr. Addington, of Lord Stowell, and Lord Gifford, were allowed admission into the House of Lords; a slight murmured at, and with reason, by a proud and sensitive profession. Their fleece alone remained dry while the dew of court favour fell on all around. Lord Hardwicke, to whose character and conduct that of Eldon most closely assimilates, was in like manner reproached for preventing the grant of peerages to the contemporary judges, Lee, Ryder, Willes, and Parker, by which he secured to himself all the judicial influence in the Lords' Court of Appeal. It would be unjust to suspect that any mean jealousy of this nature influenced the late chancellor in a proscription which, for a season, included his own brother in its range. He was at length ennobled, but not till more than twenty years after the original request. The Keeper of the Great Seal is believed to have entertained a firm conviction that the peerage had been already sufficiently enriched from the law, one-fifth of the peers of England tracing their origin to that prolific source. His penuriousness may have been carried too far, but has been amply atoned for by subsequent profusion. Since his abdication but nineteen years have passed away, and already twelve coronets glitter

on the wearers of the long robe. Peace, then, to his manes! The honour of the bar has surely been sufficiently vindicated.

By the great majority of that bar, notwithstanding his niggardly distribution of honours, though he even kept back some eminent and deserving lawyers from the rank of king's counsel, to which their standing entitled them, Lord Eldon is held in affectionate remembrance for the mixture of suavity and firmness, the mild and kindly spirit, yet dignified address, of which Chesterfield inculcated the diligent study, but which the chancellor had by nature. He is said to have possessed a "pantile kind of mind, which allowed the arguments of counsel to fall upon it and drop thence to the ground without making the slightest impression." But he listened to the counsel just called, to the merest tyro in his profession, with no less gravity of attention than to the arguments of the most disciplined veteran in the front row. "I admit freely and cordially," said Mr. Brougham, "that of all the judges before whom I have practised, and I have practised much, he is, out of all comparison, and beyond all doubt, by much the most agreeable to the practitioners, by the amenity of his manners, and the intuitive quickness of his mind. A more kindly disposed judge to all the professional men who practise in his court, never perhaps existed." Though the courtesy of the chancellor to the bar was gratefully felt and acknowleged, yet it was often made a subject of complaint in the profession that the judge appeared not to be listening to the arguments addressed to him.

On one occasion a barrister paused in the middle of his speech, and suggested that perhaps it would be more convenient that he should discontinue his observations, until his lordship should have finished writing the letter in which he appeared engaged. The chancellor received the remark without any signs of irritation; and answered, that he certainly was writing a letter, but that, at the same time, he was attending to the speech; and added, that had he not known that, in his own case, another employment was not inconsistent with contemporaneously bestowing the requisite attention upon the cause, he should never have attempted it; and that,

to prove his assertions, he would repeat what had been said. He then, with great fidelity, recapitulated the observations of the counsel.* On a subsequent occasion the high authority just quoted, wishing to disparage the labours of some Chancery commission which the chancellor attended, was compelled to put the House of Commons on its guard against the fascination of such an accomplished courtier. "Lord Eldon had not passed fifty years of his life amid the intrigues of cabinets, the turmoils of the senate, the conflicts of the forum, and the consultations and tricks of the profession in which men were accustomed to consider closely the interests of their clients, and sometimes peradventure their own interests, to commit any of those blunders into which weak and inexperienced men might be hurried. No. The noble and learned lord attended the commission endowed with all the graces of a complete courtier, with the most entire and unbroken good humour, with all the charm of manner which his experience had taught him to engraft on a naturally affable temper, with a great reputation for profound research into the laws of his country, with a name already associated with its legal history; the noble and learned lord, rich in all these accomplishments, clothed in smiles and courtesies, and laying aside the authority which he had a right to assume, endeavoured to mislead those whom he had no right to attempt to influence." †

No higher tribute can be awarded to his powers of pleasing than the fears thus forcibly expressed of such an opponent; but he displayed the same winning grace in quarters where there could be no ground for suspecting that he assumed it from any interested motive. Upon those unhappy persons, the afflicted in mind, body, or estate, who sometimes broke through the trammels of Chancery etiquette to make their grievances known in person, his singular kindness of manner acted with the force of a spell. However irregular the application, or however unbecomingly pertinacious the applicant, Lord Eldon listened with most patient attention, until the object was discovered; and then advised with gentleness, or softened refusal by complacency. "When I was very young at the bar," said Mr. Farrer, "a junior barrister applied to the

* Mr. Surtees. † Mr. Brougham in the House.

Lord Chancellor to put off some case on the ground that he was going the circuit. 'Is any gentleman with you?' said Lord Eldon. 'Mr. ——— (naming an eminent king's counsel) is my leader.' 'We shall be very sorry to lose your assistance,' rejoined Lord Eldon placidly; but we will do the best we *can* in your absence.'" With all this good nature, however, he kept his court in perfect subjection. There was an unlucky cause which had stood so long in the paper that every one had forgotten its circumstances. When the chancellor had finished giving judgment, "I know I was in this case," said Mr. Heald; "but whether judgment is for me, or against me, I have not, at this distance of time, the most distant conception." "I have a glimmering notion that it is for me," answered Mr. Horne. Their chief instantly stopped further discussion by desiring, in a tone of grave rebuke, that counsel would not make him the subject of their observations. They yielded at once to a demeanour which softened the roughness of Bell, and subdued the despotic and domineering temper of Romilly. Though meeting the solicitors of his court almost as equals in his private room, Lord Eldon would give an instant check to any undue familiarities. He had been chatting familiarly with an attorney. "You never gave me a brief, Mr. L——; how was that?" "Yes, I did," said the gentleman sturdily. "Nay, nay; I am satisfied of the contrary," rejoined the chancellor; "my recollection on such a point must be the better of the two." But when he proceeded to express an opinion adverse to the attorney's case, and the latter exclaimed with too much bluntness, "Your lordship is decidedly wrong: I will have your decision reversed in the Lords." "Perhaps, Mr. L——," said the chancellor, rising, "you had better take that chair, and pronounce judgment there." His conduct to his brother judges in equity appears to have been guided by the same tone and spirit —

"Parcere subjectis et debellare superbos."

To Sir John Leach, who set himself up as a rival to his superior and wished the number of his decisions to be counted without caring much for their correctness, the offended Chancellor was in the habit of alluding with smooth-tongued but

bitter censure, when those precipitate judgments were submitted to his notice on appeal. There was much of what Lord Bacon calls "affected despatch" in Sir John Leach's proceedings, and while he appeared to regard the quantity of judgments which he pronounced in a given time far more than their quality, he left it to his learned chief to complain, that cases were decided at the Rolls, but heard when they came by appeal before the Chancellor. The wits named one the Court of "oyer sans terminer," and the other the Court of "terminer sans oyer;" and a great and candid critic, Sir S. Romilly, professed himself, to Lord Eldon's extreme delight, better pleased with the tardy justice of the principal, than with the swift injustice of the deputy. The acute and truth-telling Sir Charles Wetherall expressed himself of a similar opinion. "He preferred dull truth to brilliant error, slow accuracy to expeditious ignorance. Some honourable gentlemen were not particular though 20,000*l.* a year should occasionally be given to the wrong party. A judge who had formerly been condemned by some person for not running quickly through the criminal calendar, had answered the impatient railer by observing that he so judged in the day as to be able to sleep on going to bed at night. So thought and acted Lord Eldon."

The jealous vigilance with which the Chancellor watched and sought to curb the precipitancy of his Vice, being animadverted upon by opposition, he gave way to a burst of passion, kindled by a nice sense of honour, lest he should be supposed to take an unfair advantage of a brother judge which had nearly involved him in a painful collision with the offended majesty of the House of Commons. In one of the many motions yearly renewed by party tactics on the delays in the Court of Chancery, Mr. Abercromby, afterwards Speaker of the House of Commons, was reported to have asserted that the Chancellor heard appeals on fresh evidence. Four days had passed after the debate before Lord Eldon saw the obnoxious paragraph in a newspaper, and hastening into Court, declared with visible emotion, "With respect to appeals and rehearings, it is supposed I have heard them on new evidence, and by so doing have brought discredit on

some part of the court. It is an utter falsehood! On re-hearings it is always competent to read the evidence given in the cause, though it was not read in the court below, either by the counsel or the judge. Further than that the court does not go. On appeals it only reads what has been read in the court below, and that practice I have never departed from in any one instance. Really before things are so represented, particularly by gentlemen with gowns on their backs, they should at least take care to be accurate, for it is their business to be so."

The words of Mr. Abercromby had been misreported, and, warmly resenting the indignant remarks of the Chancellor, he brought his complaint before the House as a breach of privilege. The sympathies of honourable members, ever jealous of their privileges, were awakened in his behalf, and scarcely could the intrepidity and address of Mr. Canning induce the majority to reject the motion, "that Mr. Farquharson (the short-hand writer) be called in;" the numbers being, — Ayes, 102; Noes, 151; majority, 49; — much less than the wonted ministerial majority. Lord Eldon had certainly been rash in not making further inquiries before expressing himself with so much heat: "he wore his honour on his sleeve for daws to peck at;" but his sufferings on that memorable night formed a sufficient atonement for his precipitation. During an eager and protracted debate, he was seen hovering about the lobbies in a state of the most anxious suspense. On the explanation of Mr. Abercromby, however, and the failure of his motion, the Chancellor resumed his wonted equanimity and good humour, the sudden departure from which had startled the public like a flash of sheet lightning on a calm summer's day. It passed innocuously away, and all was again serenity and sunshine.

His bon-mots did not cost Lord Eldon much midnight vigil, and hardly exceeded good-humoured pleasantry, but they relieved and illumined the dullness of his court. "Your lordship," said Sir Charles Wetherall, "cannot be supposed to be a great strategist; it is no disparagement to say that you cannot have the army list by heart." "No, Sir Charles, I know nothing of military matters;" rejoined the Chancel-

lor, "all my acquaintance is with the Lincoln's Inn volunteers." When a young counsel unguardedly moved for an injunction against digging up pasture-land, and sowing it with wheat or any other pernicious crop: "You may take your injunction," said Lord Eldon, smiling; "but in the North of England we are not in the habit of calling wheat a pernicious crop." He would now and then perpetrate a detestable pun, though as conservative of the pocket as Dr. Johnson himself. The following case afforded a regular field-day to the legal punsters. It was an injunction, Metcalfe v. Thompson, for restraining the defendant from invading the plaintiff's patent for hair-brushes. The great secret consisted in some of the hairs being long, and others short. The defendant was selling brushes of this description without licence. No counsel appearing for the plaintiff, the Chancellor said, "This injunction must be brushed off, unless some counsel be here in a few minutes to support it."* The brush of one Fox, an old wig-maker, was produced, the same to a hair as the patent brush. The Chancellor inquired waggishly, "Is it a Fox's brush?" (meaning an old hair-dresser in the Temple). "This old brush," he continued, "Mr. Treslove, is rather an odd sort of thing; but when you and I get as old, and our tresses have been as well worn as these, we shall look perhaps quite as antique." Mr. Treslove said he had advised his client not to show his brush. The Chief of his court rejoined, as if playing at High Jinks, "There I must say that you, being a pursuer, was at fault; for if an injunction is granted by this court, the article on which such an injunction is granted must be lodged with the Master. I remember in a case of waste, that a person in this court, who made an affidavit, actually affixed his oak trees to his affidavit, to show the court of what nature the trees were." The injunction was discharged amid the merriment of the court, which always sympathized (a peculiarity not confined to the Equity Courts) with the jestive moods of its chief.

This amenity of manners, which graced and conciliated his court, formed, as it were, an all-powerful letter of introduction to a higher audience. However obnoxious to the

* Westminster Hall.

Whig opposition, not less from his Tory opinions and uncompromising avowal of them, than from his long and retentive tenure of office, they found it impossible to cherish unmitigated dislike against one whose kindness of deportment was unvarying to all, who never failed, in the routine business of the House, on appeals, or in the chance intercourse of society, to say the kind word, or perform the graceful act. Without humiliation, he could propitiate the proud, and make friends of the reserved without intrusion. Even after a sharp altercation, into which he rarely fell, with some political opponent, the angry front was at once smoothed by the Chancellor's felicitous explanation. When charged by Earl Spencer with legal subterfuge and subtleties, Lord Eldon "would inform the noble Earl that he had as high a regard to the honour of Parliament and his own honour as the noble Earl, and he meant by that to express his feelings of the injustice done him, since he could not wish for a higher character as a public man, nor a higher character as a private man, than that of his lordship." Earl Spencer naturally felt disarmed of his anger, and, stepping up to the woolsack, shook hands with the offended speaker. Some few peers, however, contrived to keep the conciliating Chancellor at arm's length, by an evident effort, and, in law language, "with malice prepense." In this select few was Lord Byron, whose repulse of his overtures is thus amusingly recorded: —

"There was not a single member of the senate," writes Dallas, "to whom Lord Byron could, or would apply to introduce him. March 13th, 1809.—There were very few persons in the House, Lord Eldon was going through some ordinary business. When Lord Byron entered, I thought he looked still paler than before, and he certainly wore a countenance in which mortification was mingled with, but subdued by, indignation. He passed the woolsack without looking round, and advanced to the table where the proper officers were attending to administer the oaths. When he had gone through them, the Chancellor quitted his seat and went towards him with a smile, putting out his hand warmly to welcome him; and, though I did not catch his words, I saw that he paid him some compliments. This was all thrown

away upon Lord Byron, who made a stiff bow and put the tips of his fingers into the Chancellor's hand. The Chancellor did not press a welcome so received, but resumed his seat; while the new peer carelessly seated himself for a few minutes on the opposition side of the House—one of the empty benches to the left of the throne. When, on his joining me, I expressed what I had felt, he said, 'If I had shaken hands heartily, he would have set me down for one of his party; but I will have nothing to do with any of them on either side: I have taken my seat and now I will go abroad.'"*

Moore says,

"I am enabled to add from his own report in one of his note books, the particulars of the short conversation which he held with the Lord Chancellor on the occasion. 'When I came of age, some delays on account of some birth and marriage certificates from Cornwall, occasioned me not to take my seat for several weeks. When they were over and I had taken the oaths, the Chancellor apologised to me for the delay, observing that these forms were a part of his duty. I begged him to make no apology, and added, as he certainly had shown no violent hurry, your lordship was exactly like Tom Thumb, (which was then being acted,) you did your duty, and you did *no more*.'"

We doubt whether the Chancellor fully understood the force of the equivocal compliment paid him, and we should have scarcely considered it worth repeating for its own sake, though the captious aristocrat has recorded the saying as a good thing. The anecdote is nothing worth except to show the suaviter in modo with which Lord Eldon received and welcomed all Peers alike, be their politics what they might.

That he should have basked during the whole of his long official life in the full sunshine of court favour, is a circumstance which can surprise none who knew the man. He resembled exactly in his address the good and great Lord Somers, who possessed, according to Swift, a regular pass-key to royal approbation. "I have hardly known any man," he writes, "with talents more proper to acquire and preserve the favour of the Prince, never offending in words or gestures, which

* Recollections by Dallas.

are in the last degree courteous and complimentary, wherein he sets an excellent example to others his colleagues. But this extreme civility is universal aud undistinguished, and in private conversation, where he observes it as inviolable as if he were in the greatest assembly, it is sometimes censured as formal." To mark his regard for a character which resembled his own in its plain manly strength, as well as in its prejudices, George III. gave his favourite Chancellor a watch with a curious seal, on which was engraved the figure of Justice with the bandage removed from the eyes, attended by the figure of Religion, represented as directing the course of Justice. The king, on presenting the seal, told Lord Eldon "that Justice was generally painted blind, but he did not see why she should be so, if her path was guided by Religion." But though partial in the extreme to his Chancellor, the good old King was too firm a foe to innovation to permit any change in the official costume of the keeper of his conscience. He was subject to violent headaches, and requested his royal master's permission on that account to dispense with his wearing the full flowing wig. In reply to the king's objections, it was urged that the wig itself was but a modern fashion, being nothing more than the full dress of Charles the Second's time. "It is very true," his Majesty replied, "but before that period judges wore long beards. I will consent to your not wearing a wig, if you will wear a long beard instead." The alternative was not accepted. The royal favour once led Lord Eldon (then Chief Justice of the Common Pleas) into a laughable dilemma. George III. was, according to custom, spending the summer at Weymouth, and sent his commands to the judge on his arrival at Dorchester, when travelling the summer circuit, to come over and see Knight perform in some favourite comedy. He rode over of course in obedience to the mandate, and after laughing at the comedy in company with royalty, was induced next day to join in a boating excursion. The party landed on the banks of the Tamar to rest the men, to view a ruin, and lunch. Unluckily there were a number of apple trees close by, loaded with fruit. The boat's crew mounted the trees while their passengers were absent, and soon severed a large quantity of apples from

the realty. The owner and the company returned at the same time, and Lord Eldon was loudly threatened by the Devonshire farmer:—he would have him and all his party up before the judges at the assize town next day for felony. They might have demurred to the jurisdiction, but could scarcely have pleaded coram non judice.

A great regard for Lord Eldon was inherited by several of the children of George III., especially the Dukes of York and Cumberland, who were in the constant habit of consulting him, and the Prince Regent. To the confidence, as to the society of the Prince, this excellent courtier was recommended not more by the extraordinary fertility of his resources as a counsellor in difficult emergencies, than by his singular powers of pleasing in the intercourse of private life. For his manners were rendered peculiarly attractive by the charm of constant good humour; and his conversation, if not so classical and refined as that of his brother Sir W. Scott, and somewhat tinged with the rust of professional society and legal habits, was, nevertheless, lively and entertaining to a very high degree. No greater testimony can be given to his social qualities than the fact, that he should have been as great a favourite with the son as with the father—not more beloved by George III. than by his very dissimilar successor. When Prince Regent, he was in the habit of speaking familiarly of his Chancellor as "Old Bags," a nick-name probably derived from the embroidered bag, or king's purse, which on state occasions he has carried before him. One day, when the Prince had desired some one in waiting to send for Old Bags, Mr. Bankes, with a look of more than usual importance and satisfaction, entered the presence, but his reception gently intimating that he was an unbidden guest, he muttered forth an excuse that he had only ventured to appear in obedience to a royal command. The Prince Regent smiled, and said, "Oh! I see they have confounded the name. It was not old Bankes I sent for." The mistake derived additional poignancy at court from that excellent country gentleman, one of the last members of the Independent Club, informing every one he met with *en route*, with the utmost self-complacency, that he had been sent for to court.

At the coronation of George the Fourth, the Lord Chancellor was promoted to the dignities of Viscount Encombe and Earl of Eldon, by patent dated July 7. 1821, in which it was expressly stated, by his Majesty's special desire, "that these titles were conferred in consideration of his profound knowledge of the laws of his country, and the distinguished ability and integrity which he had invariably evinced in administering them in his office of Chancellor, during a period of nineteen years."

Of the courtier-like anxiety with which he sought to consult the ease of the royal Sybarite, a curious specimen is afforded in the following letter to Sir William Knighton, who stood as near to the throne as himself in kingly favour, and by the same legitimate means. Though of humble birth and strict integrity, no safe passports at a luxurious court, they were both patterns of high-bred courtesy, scrupulously observant of all the nice etiquettes and forms in which regal pomp finds shelter, and resembling in their mild and polished gravity the manners of a Grandison, when he had donned his ruffles and embroidery. The letter is full of those official details which make the crown heavy.

"Dear Sir William,

"Accept my best thanks for the relief to my anxiety which your letters afford. I am very apprehensive, from your accounts, that his Majesty may not be sufficiently recovered to nominate the sheriffs on Saturday at the council; though gout, however, sometimes abates its violence considerably in three days; and my anxious wish is that great progress may be made in that period in recovery. I should myself have attended on Saturday if my absence from the court on that day had not necessarily been very inconvenient and expensive to parties. I must give you the trouble to say that I propose to take the liberty, for that is necessary, of sending by the Clerk of the Council a commissioner to receive the royal sign manual for opening Parliament on Tuesday; and should his Majesty not sign it, and direct it to be returned by the Clerk of the Council on Saturday, you will be pleased to take the most convenient time to his Majesty for tendering it for his signature, that I may be enabled on Monday night to put the great seal to it, or to put the seal to it early on Tuesday morning. Be pleased to offer my most humble duty to his Majesty, my warmest thanks for

his kind expressions conveyed to me in your letters, and my assurances that I most anxiously and cordially wish his Majesty's speedy recovery.

"Yours, my dear Sir, truly,

"ELDON.

"Thursday noon.

"Pray let me know that you have received this. I am afraid I shall be obliged also to trouble his Majesty for his royal sign manual to authorise the judges to go their respective circuits, but that I shall delay as long as possible, to avoid inconvenience to his Majesty.

"Lincoln's Inn Hall, from the Bench."

On his resigning the great seal in 1827, the grateful monarch presented his old and faithful servant with a superb vase silver-gilt, on which was engraved a flattering testimonial. Immediately after the passing of the Roman Catholic Relief Bill, a measure as distasteful to his Majesty as it was to the majority of his English subjects, Lord Eldon attended the levee. The King, who had drawn himself up to his full height, and thrown his head back in token of haughty displeasure, when conversing with his ministers, immediately came forward to welcome the aged peer, and clasping him by both hands, exclaimed in the warmest tones of cordiality and esteem, "My dear good old friend, how delighted I am to see you looking as you do." More fortunate and more deserving than Wolsey, he had served his King as faithfully as his God, and was not deserted in his grey hairs.

To this devoted spirit of loyalty may be ascribed his voluntary exposure to the most formidable attack to which Lord Eldon was subjected during the long course of his political life. No one exercised so strong and beneficial an influence over George the Third, when suffering under attacks of insanity, especially with regard to his dress and personal habits, as the Chancellor, who, on the King's recovery from one of these afflictions, was in general the very first person that was sent for. He had not long accepted the great seal, when the good old King was smitten in a manner that obscured for several months his otherwise excellent intellect. In a private interview with his Majesty, before his complete recovery, the

Chancellor found his royal Master so perfectly competent to form a sound judgment, that he submitted to his pleasure several affairs of state, though his person was not free from restraint, and the physicians were far from being satisfied with his complete restoration to mental sanity. This proceeding, bold and honest, does honour to his firmness, but when the particulars transpired at the examination of the physicians on the renewed illness of the King in 1811, his conscientious daring became the mark at which every Whig shot his arrow. In the House of Lords, Lord Grey opened the charge against the obnoxious Chancellor with all the dread solemnity of an impeachment: —

"In performing what I conceive to be my duty to your lordships and to my country, I am bound to arraign the noble and learned lord for an offence little short of high treason. In bringing this accusation against the noble and learned lord, I will not conceal that it is my intention to deal as severely with him as I possibly can, but at the same time as justly as the importance of the question and solemnity of the case require. This rigid and impartial line of public duty I shall observe towards the noble and learned lord, determined that neither his agitation nor his fears shall deter me from arraigning him, if I shall find that he has been guilty of what I cannot but consider all but high treason. The noble and learned lord asks, what is the designation of that crime which a public servant would commit in refusing to obey the just commands of his sovereign? I acknowledge that would be treason to the sovereign; but with my answer to that appeal I beg leave to couple another question — What, I ask, would be the character — what the appropriate punishment of his offence, who, knowing his sovereign to be actually at the time incompetent; who, in the full conviction of his notorious and avowed incapacity, and whilst he was under medical care and personal restraint, should come here and declare that there was no necessary suspension of the royal functions; who under such circumstances should, in his majesty's name, and under the pretext of his majesty's commands, put the royal seal to acts which could not be legal without his majesty's full and complete acquiescence; what, I ask, would be the crime of that

man who would venture to take such a course? I do not hesitate to pronounce his offence to be treason against the constitution and the country. . . . By referring to the evidence of Dr. Heberden it appears, that at the very period the noble and learned lord on the woolsack made that declaration in March 1804, his majesty had been ill, and continued in that state from the 12th February to the 23d April following, when he presided at a council. Within that interval, viz. on the 9th of March, a commission was issued under his majesty's great seal for giving the royal assent to fifteen different bills which had passed the two houses. But still the noble and learned lord had, on the 5th of March, an interview with his majesty, in consequence of which he felt himself warranted in declaring to your lordships that his majesty's intellects were sound and unimpaired. But will this House consider a hasty opinion formed during such an interview, which may have taken place at a lucid interval, sufficient to outweigh the evidence upon oath of physicians regularly and constantly in attendance? Will you not, on the contrary, be convinced that it would be a direct breach of the constitution for the highest officer in his majesty's service to venture, under such circumstances, even during a lucid interval, to take his majesty's pleasure upon high matters of state? I will put it even to the noble and learned lord himself, whether, in the case of a private individual who should have continued from February 12th to April 23rd in a state of lunacy, and might within that period have been induced by an attorney to make a will, the noble and learned lord would consider such a will valid? If the transaction should subsequently be admitted to the Court of Chancery, what would be the feelings of the Court—what its just reprobation of the conduct of the attorney?"

We have no space for further extracts from Lord Grey's long and eloquent attack. The chancellor, always agitated when any question connected with his character or conduct was at issue, rose under feelings of great excitement. "He declared that on the 9th of March his majesty was fully competent to do the act they had advised him to perform. If he had had the smallest doubt of his majesty's competency, he would have taken it on himself to have signed the commission

for giving the royal assent, and trusted to an indemnity, or have come to the House and made a declaration. But he had then no doubt, and he asserted that it was most important to the sovereign that the chancellor should not depend wholly on the evidence of physicians, if he himself thought the king perfectly competent to discharge the functions of the royal authority. His interviews with his majesty at that time were always in the absence of all persons who might be considered as exercising any control over him, and it was his firm conviction that he was warranted in the course that he then adopted. He knew the dangers of this proceeding, but he knew his duty too; and had determined to see his sovereign, and judge of his complaint, when he was as free from restraint as any of his subjects whom it had been his painful duty to examine under similar circumstances. His majesty, on the 9th of March, understood the duty which he the Chancellor had to perform better than he did himself. If he had acted wrong, it was with the best intentions, and those would acquit him in the sight of God, if not in the opinion of his country." On the following night, when Earl Grey repeated with indignant bitterness, "the noble and learned lord must excuse him when he said he must have better authority than his declaration for his majesty's recovery," the loyal and faithful Chancellor renewed his apology: "Confident in the probity of his own heart, and assured of the integrity with which he had laboured to perform the duties of his office to the sovereign and to the public, he would repeat what he had said on a former occasion, that he not only would not decline, but that he challenged the strictest inquiry into his conduct. The noble earl might well have spared the observations that had fallen from him. He would not scruple to declare to their lordships, that no fears, no influence of any kind, should deter him from doing over again what he had already done, if he conceived that it was necessary to the interests of the king his master, or to those of the country at large. When he mentioned his majesty, he never could speak of him without gratitude for the favours and obligations he had heaped upon him: he never could think of his unhappy malady without the acutest sensibility. Neither the reports of the physicians, nor threats in

or out of doors, should operate to prevent his exercising his own judgment in whatever regarded his royal master's interests. He would rather perish ignominiously on the scaffold than desert his allegiance to his sovereign, by declining to take any steps which his duty and his office pointed out to him. He would act in every possible case upon his official responsibility, and be content to leave the consequences to God. Charges or menaces were alike indifferent to him. Let the shock come, he was ready boldly to encounter it — 'Impavidum ferient.' For myself," were the Chancellor's closing words, "let me but see my sovereign well, and then let me depart in peace."

After this pathetic address, Lord King moved to omit the name of John Lord Eldon from the important trust of the Queen's Council. The division gave a large majority in Lord Eldon's favour — content, 54; not content, 139. A protest, recapitulating the charges in firm but temperate language, was signed by Lords Grey, Holland, Erskine, and six other peers. We have dwelt at greater length on this important incident from the sensation it occasioned at the time, and the delight with which the old earl was accustomed to feel, in days when the devotion of English subjects to their sovereign began again to be overcast, on his happy, loyal daring. Of the deep and abiding resentment which the Whigs entertained to a statesman who had thus ventured all for his monarch, we have been lately reminded by an article in the Edinburgh Review, containing a clever but highly coloured sketch of the most distinguished political characters during the last three reigns, in which this memorable incident in Lord Eldon's life is commented on with bitter and unjust severity. Though this particular feature is distorted, and the shadows are too much deepened, the portrait is still drawn by a generous enemy, well acquainted with the peculiarities of the great statesman he so graphically describes: —

"To great legal experience, and the most profound professional learning, Lord Eldon united that thorough knowledge of men, which lawyers who practise in the courts, and especially the Courts of Common Law, attain in a measure and

with an accuracy hardly conceivable to those out of the profession, who idly fancy that it is only from intercourse with courts and camps that a knowledge of the world can be derived. He had a sagacity almost unrivalled; a penetration of mind at once quick and sure; a shrewdness so great as to pierce through each feature of his peculiarly intelligent countenance; a subtlety so nimble, that it materially impaired the strength of his other qualities, by lending his ingenuity an edge sometimes too fine for use. Yet this defect, the leading one of his intellectual character, was chiefly confined to his professional exertions; and the counsellor so hesitating in answering an important case—the judge so prone to doubt that he could hardly bring his mind to decide one—was, in all that practically concerned his party or himself, as ready to take a line and follow it with determination of purpose, as the least ingenious of ordinary politicians. The timidity, too, of which he has been accused, and sometimes justly, was more frequently the result of the subtlety and refinement which we have mentioned. At all events, no one knew better when to cast it off; and upon great occasions, that is, the occasions which put his interest or his power in jeopardy—a less wavering actor, indeed, one more ready at a moment's warning to go all lengths for the attainment of his object, never appeared upon the political stage. His fears in this respect very much resembled his conscientious scruples, of which no man spoke more, or felt less; he was about as often the slave of them as the Indian is of his deformed little gods, of which he makes much, and then breaks them into pieces, or casts them into the fire. When all politics seemed smooth, and the parliamentary sea was unruffled as the peaceful lake, nothing was to be heard but his lordship's deep sense of his responsible duties; his willingness to quit the great seal; the imminent risk there was of his not sitting again in that place; the uncertainty of all the tenures by which official life is held; and even the arrival of that season when it became him to prepare for a yet more awful change; and the hearer, who knew the speaker, felt here an intimate persuasion that the most religious of mortals could not have named the great debt of nature with more touching sincerity, or

employed an expression more calculated to convey that feeling of dread. Such were the songs of the swan, when the waters were a mirror, and there was no fear of dissolution. But in foul weather, the instant that peril approached—be the black cloud on the very verge of the horizon, and but the size of a man's hand—all these waters were hushed, and a front was assumed, as if the great seal had been given to him for life, with the power to name his successor by any writing under his hand, or by parol before a single witness. In like manner, when the interests of suitors required dispatch, when causes had been heard by the hour, and by the day, and all the efforts of the judge to coax the advocate into greater prolixity had been exhausted, the dreaded moment of decision came, but brought only hesitation, doubt, delay. So, too, when common matters occurred in parliament, and no kind of importance could be attached to the adoption of one course rather than another, bless us! what inexhaustible suggestions of difficulty, what endless effusion of conflicting views, what a rich mine of mock diamonds, all glittering and worthless, in the shape of reasons on all sides of a question never worth the trouble of asking, and which none but this great magician could stop to resolve. So again in the council, when there was no danger of any kind, and it signified not a straw what was done; the day, had it been lengthened out by the sun being made to stand still, while our Joshua slew all the men of buckram that he conjured up, would yet have been all too short to state and to solve his difficulties about nothing! But let there come any real embarrassment—any substantial peril which required a bold and vigorous act to ward it off—let there but be occasion for nerves to work through a crisis, which it asked no common boldness to face at all—let there arise some new and strange combination of circumstances, which governed by no precedent, must be met by unprecedented measures, and no man that ever sat at a council board more quickly made up his mind, or more gallantly performed his part. Be the act mild or harsh, moderate or violent, sanctioned by the law and constitution, or an open outrage upon both, he was heard, indeed, to wail and groan much of painful necessity—often vowed to God—spoke

largely of conscience—complained bitterly of a hard lot—but the paramount sense of duty overcame all other feelings, and with wailing and with tears, beating his breast, and only not tearing his hair—he did in the twinkling of an eye the act, which unexpectedly discomfited his adversaries, and secured his own power for ever. He who would adjourn a private road or estate bill for weeks, unable to make up his mind on one of its clauses, or take a month to determine on what terms some amendment should be allowed in a suit, could, without one moment's hesitation, resolve to give the king's consent to the making of laws, when he was in such a state of mental disease that the keeper of his person could not be suffered to quit the royal closet for an instant while the patient was with the keeper of his conscience, performing the highest functions of sovereignty.

"With all these apparent discrepancies between Lord Eldon's outward and inward man, nothing could be more incorrect than to represent him as tainted with hypocrisy in the ordinary sense of the word. He had imbibed from his youth, and in the orthodox bowers which Isis waters, the dogmas of the Tory creed in all their purity and rigour. By these dogmas he abided through his whole life with a steadfastness, and even at a sacrifice of power, which sets at defiance all attempts to question their perfect sincerity. Such as he was when he left Oxford, such he continued sixty years afterwards, to the close of his long and prosperous life; the enemy of all reform, the champion of the throne and the altar, and confounding every abuse that surrounded the one or grew up within the precincts of the other, with the institutions themselves; alike the determined enemy of all who would either invade the institution or root up the abuse."*

In our next and concluding chapter, when considering Lord Eldon as a legislator and a statesman, we shall view the lights and shadows of his character without prejudice or passion, and illustrate an imperfect notice of this great and good man, with the particulars of those social and domestic virtues which never shone so brightly as in the reflection of his own fireside.

* Lord Brougham's Historical Sketches.

CHAPTER X.

THE LIFE OF LORD ELDON CONTINUED.

We live too near the times over which the Chancellor exercised so decided a control, to judge with perfect impartiality of his merits and defects as a statesman. In the eyes of eager reformers he is considered as the determined opposer of every thing good — the zealous, able, and indefatigable supporter of every thing evil — called by Romilly, in his gloomy moods, the evil spirit, and accused by Bentham of nipping in the bud the spread of improvement over the habitable globe. In such a fanatical spirit is Lord Eldon judged and condemned in the coteries of self-styled Liberals. By the good old Tories, on the other hand, the "laudatores temporis acti," the defenders of church and state, he has been regarded with almost idol worship as the pattern statesman, the civil Fabius, whose caution saved our commonwealth — the champion of Protestant ascendancy, to whom the voices of all loyal subjects, and one cheer more, should freely and heartily be given. But though the partiality of friends and admirers may view his career through an exaggerating medium, their homage rests on a much more solid basis than the reproaches of his adversaries. We can refer to our annals during the last twenty years of George the Third and the Regency for proof that he rendered his king and country good service in the cabinet, no less than on the judgment-seat — in the senate as well as in his court. He was among the most influential of those ministers who waged a war of extent and cost and danger before unknown, for the existence of this country as a first-rate power — for the preservation of ships, colonies, and commerce, — for national honour and individual safety, — crowning the glorious contest which necessity had extorted with a permanent, because honourable, peace. Instead of huckstering hostility, they waved our standard in triumph

over the sea at Trafalgar, and immortalized the English name at Waterloo. The instruments they employed were doubtless the chief occasion of the final victory — to Nelson and Wellington more praise may with justice be awarded than to the decision of the government. But to have selected such commanders is no slight merit, and surely they ought not to be defrauded of a large share of honour, who, in defiance of the humiliating motions and pusillanimous prophecies of an exasperated opposition, persevered through evil report in rescuing Spain from the despot, in maintaining that independence which the Whigs declared was no longer maintainable, and in vanquishing the invincible! Arrayed by Grey and Whitbread, a formidable phalanx entreated ministers to restrain their military ardour, and conjured the country, by the adoption of other and more pacific councils, to retreat from certain destruction: —

> "Stabant orantes primi transmittere cursum,
> Tendebantque manus ripæ ulterioris amore."

To the honour of the Chancellor be it recorded, that he always advocated most strongly, both in council and in parliament, a persevering endurance of the war. His predecessor, Lord Hardwicke, did not enforce military measures with more warmth, when he elicited the sarcastic praise of Walpole, "Bravo, General Yorke!"* But it must be confessed that Lord Eldon was too averse to change when a state of peace, and, with it, the reforms usually engrafted on a state of peace, had arisen. A more faithful servant never stood beside the throne; a more true and zealous son never knelt within the walls of the Established Church. He viewed with a jealousy too keen, and not free from prejudice, the hasty designs of theorists, and in an excess of caution *ne quid detrimenti respublica caperet*, allowed the season for much safe and salutary change in the church, and law, and state polity, to escape. But he was just verging on three score years and ten when peace was established, and had attained that age at which "even the wisest object too much, consult too long,

* Lord Orford's Memoirs.

adventure too little, and repent too soon."* Some minds, says Crabbe,

> "Like smelted iron still the form retain,
> But once impressed, will never melt again."

His mind seems to have been moulded between 1788 and 1798, and to have subsequently undergone no material alteration,—mistrusting the most specious improvement, considering any organic change as synonymous with confusion, and satisfied that audacity in reform was the principle of revolution. He paid too little heed to the advancing spirit of investigation, and persisted in following at the flood those ancient fords and path-ways, which could only be pursued in safety at an ebb tide. It was the natural error of an old lawyer, but not the less to be deprecated.

Unlike his prototype, Lord Somers, he shrunk from the task of legislation, and declined to rest his renown on the amelioration of our civil and social institutions. Timidity of temper and excess of official toil are sufficient reasons for this reserve, without imputing unworthy motives, as harsh professional critics have not scrupled to do. "Lord Eldon," we are told, "came into power at a conjuncture when the decided change which was taking place in the texture of social wealth, and in the commerce and population of the country, indicated that a greater change in our law and legal institutions would soon become desirable than had taken place at any antecedent period of our history. Had he prompted, promoted, or superintended this great work, the length of his reign, and extent of his influence, would have enabled him to bring it almost or altogether to its completion, and thus to leave a monument to his memory which it falls to the lot of few individuals to have the power of erecting. Unfortunately for the country, and his own reputation, he pursued a totally opposite course. Feeling that his strength did not lie in the depth and comprehensiveness of his general views, so much as in the extent of his acquaintance with the minutiæ of precedents and practice, and perceiving also that the surest way of continuing in place was to abstain from all innovation, his love of power combined with his love of superiority to induce him to with-

* Bacon's Aphorisms.

hold from all decided improvements himself, and to look with an unfavourable eye on those which were proposed by others."* The same kindly but erroneous feeling which is said to have staid the hand of the Chancellor D'Aguesseau, may have also made him averse from attempts at improvement in his own peculiar department. According to the authority of the Duc de St. Simon, the French Chancellor being asked whether, with his experience of the chicanery of the law in legal process, and of the length of legal proceedings, he had never thought of some regulation which might put an end to them? "I had gone so far," said D'Aguesseau, "as to commit to writing the plan of such a regulation; but after I had made some progress, I reflected on the great number of attornies and officers whom it would ruin: compassion for them made the pen drop from my hand."† These professional prejudices might have interfered with his reforming ordinances, but they seem to have been more completely conquered by the French than by the English Chancellor. Other professional reasons may be assigned for Lord Eldon's timid shrinking from innovation. Lawyers are naturally partial to a science in which, after years of painful study, they have become proficients, and, from their experience of its danger, are averse to change. Even the acute Dunning defended the absurd trial by wager of battle as one of the pillars of the constitution; he should rather have said, if disposed to be metaphorical, one of the cobwebs that had gathered over it. With a similar superstitious feeling of law-craft, Lord Raymond opposed the sensible statute requiring all law proceedings to be in English, on the practical ground that, as they were to be obeyed in Wales, we must have them also in Welch! The apprehensions of Lord Eldon were not so far strained, but he appears to have been equally sensitive of danger.

He saw with intuitive acuteness the abuse, but 'his heart failed him for fear' when he came to apply the remedy. Soon after taking his seat in Lincoln's Inn Hall, he denounced certain defects in his court, but the guilty were not alarmed, for his thunder rolled innocuously away, and a perfect calm

* Miller's Civil Law. † Butler's Catholic Church.

succeeded. "It is absolutely necessary," he declared, "that it should be perfectly understood, that the property of schools, all over the kingdom is dealt with in a manner most grossly improvident, amounting to the most direct breach of trust." With equally quick apprehension of the existence of the evil, he declared the bankrupt laws a disgrace to the country, that the effects of the bankrupt were a stock in trade for the commissioners, assignees, and solicitors; but this stock in trade continued, though so many in the country had broken down in consequence, during the twenty-five years that ensued. Again, in June, 1824, in the midst of the midsummer madness of commercial speculation, when "Prosperity Robinson," as he was nicknamed, saw nothing but prospective visions of national and individual affluence, and the people, unimproved by a century's experience, were rushing headlong into Utopian speculations, he declared, in a spirit of prophetic wisdom, that without some restrictions these companies would be the most ruinous nuisance ever known. When Parliament met in February, 1825, the Chancellor lost no time in giving notice, as the fever had not subsided, that he would bring in a bill to put down, in some instances, and to load with fearful liabilities in others, these joint stock company nuisances. Happy would it have been for hundreds of deluded speculators had his good intentions been fulfilled. But the session wore away, and towards the close of it Lord Eldon emerged with an apology, that parties had come before him as judge, and he did not think it right to be declaring the law in that house while he had to give judgment in another place: a good reason undoubtedly for his own abstinence, but not for that of his colleagues, some one of whom might surely have taken charge of this remedial measure. The Chancellor's defence against the reproach of having neglected his duty in the improvement of the law was, that he ought not to take upon himself the ostensible management of any change that might be proposed. His labours were too heavy and multifarious to leave him time for more than a very general superintendence of the execution of any proposed alteration. He must commit the details to others, and yet the public opinion that the whole had his sanction, would

often prevent the due canvassing of the measure while in progress, and, when it was brought to a conclusion, the blame of all the defects discovered, when too late, would be thrown upon him, and his reputation, and consequently his utility, would be proportionably diminished. It was, therefore, better that such plans should be avowedly, as well as in fact, digested by a commission of sufficient leisure for the task, and not so distinguished by official dignity as to exalt their labours above criticism. Notwithstanding these reasons, which have certainly much force, Lord Eldon did make some small contributions to the Statute Book, under the pressure of necessity or the conviction of obtaining some practical good.

When Attorney-General, he introduced a bill for putting down Corresponding Societies, to the success of which in fully attaining its object he afterwards adverted with much pleasure. "That was my bill, the seditious were subdued by measures quorum pars magna fui." In 1794 he framed the Habeas Corpus Suspension Bill for England and Scotland, to which delicate task a consummate knowledge of the Scottish law had rendered him singularly well adapted, and he subsequently drew with care and skill the requisite legislative measures for the suppression of the mutiny at the Nore. In 1805 the Chancellor presented a bill to encourage the cultivation and planting of church, college, and hospital lands, and laboured day and night, according to his own declaration, to render the 43 Geo. 3. beneficial to the clergy. His remedial statute effected much practical benefit, and repealed the penalties given to informers by the act of Henry VIII., of whose oppressive vexations Lord Eldon related an anecdote from his own experience. "A case had come under his notice of a clergyman who went down to his living in the country, and found a handsome parsonage-house, much larger than he wanted, as he had no family. An attorney in the place with a large family was living in a small convenient house, which he proposed to exchange with the clergyman, and reside at his parsonage. At the end of twelve months, when the attorney was applied to for the difference of the rent, his answer was,—'I owe you nothing; but you owe me

that '110*l.* the amount of penalty for non-residence,' which he actually sued for and recovered." We know not any case in which the cry of name! name! would have been more appropriate, for such a Volpone ought not to be robbed of his immortality, the knavish quirk should be gibbeted in chains.

The Vice-Chancellor's bill was framed under Lord Eldon's advice, on the spur of pressing necessity; he astonished the House of Peers with the intelligence that of 278 appeals and writs of error then on the table, the last of them, according to the mode of hearing hitherto acted upon, could not be decided for eleven years from that time. The bankrupt laws, scattered over twenty-one long and wordy statutes, were simplified by Mr. Eden (Lord Henley), under the Chancellor's sanction and with his assistance, to a single act of 136 sections. One of his last legislative measures before resigning the seals, was a bill for the improvement of the administration of justice in the High Court of Chancery, founded on the report of the Commissioners, and introduced into the House of Commons by Sir John Copley (Lord Lyndhurst), a measure fraught with many well considered and practical amendments. Subsequently to his retirement Lord Eldon introduced a bill to settle the law on the subject of Scotch divorces in the case of English marriages, and proved his skill as a draftsman in the improvement of several other legislative measures. So little founded in fact is the malicious waggery, that the only act he ever drew was one in 1813, called Lord Eldon's Act *par excellence*, to enable the Chancellor to make serjeants in vacation, a measure which certainly partook of the mountain and mouse character.

But notwithstanding these few official and extra official statutes, his legislative fame must rest rather on his preventive than active character. Ably seconded by Lord Lauderdale, he watched both public and private bills with extreme jealousy in their progress through the House of Lords, and thus performed an unostentatious but useful duty as hereditary councillor of the Crown. He exercised a sort of royal veto on the crude schemes and ambitious theories of those dilettanti legislators, who, neither lawyers nor statesmen, would yet fain have exercised the functions of both. Nothing delighted the

experienced old judge more than to point out the futility of some particular clause, or in his own phrase, to drive a coach and six through some heavy bill, as it plodded on in committee. Thus in the Chimney Sweeper's Regulation Bill, he slily commented on the absurdity of inflicting a penalty for employing any female, girl, or woman. "Now," said he, "it would be difficult to find a female, who was not a girl or a woman." A favourite scheme of Lord Grosvenor's, renewed by him session after session, Lord Eldon denounced as one of the greatest legal curiosities ever exhibited in a House of Parliament; "he would venture to assert that in the course of fifty centuries so much absolute nonsense would not be brought forward: such a farrago of miserable jargon never before defaced parliamentary parchment." With the assistance of the eccentric Lord Stanhope, the Chancellor did much to abolish the slovenly habit of harassing the House by the introduction of temporary bills. He protested against the practice of passing acts for a short time, and renewing them successively for limited periods, a practice injurious to the independence of parliament, as it begot habits of inattention and carelessness. His discouragement of the growth of divorce bills checked a great and increasing evil, the correctness of his assertion being admitted, that nine out of ten cases of adultery which came into the courts below, or to that bar, were founded in the most infamous collusion, and that, as the law stood, it was a farce and a mockery, as most of the cases were previously settled in some room in the city, and juries were called upon to give exemplary damages, which were never paid, nor expected to be paid, to the injured husband.

Lord Eldon's opposition, however, included with too little discrimination good measures as well as bad, and was especially directed against reforms or changes in the law. He brought an experience of fifty years, as barrister, judge, and Chancellor to bear against the improvement of our jurisprudence. When no other topic remained, he would have recourse to sophistry, would appeal to the compassionate feelings of his auditors, or invoke authorities. Against the Limitation of Actions' Bill, that most salutary statute, which swept away be-

tween fifty and sixty species of actions, his argument resolved itself into the lamentation, that professional men, if these measures were carried, would have to begin their legal studies over again. "So numerous were the alterations contemplated with respect to landed property, that it would be soon necessary, when a gentleman went to amuse himself on his estate in the country, to take an expert solicitor or clever barrister with him to inspect his title-deeds, to ascertain the validity of his rights." To the Administration of Justice Bill his objections were more specious, and involved a clear constitutional principle. He would not delegate to the judges a power parliament ought never to relinquish, that of legislation. He could not agree that the rules made by the judges should five years hence have all the force and effect of law, and be to all intents and purposes the law. So again, when valid reasons against the principle of the Bankruptcy Court Bill failed, the ex-Chancellor appealed to past ages. "He believed that the eminent persons, who had presided in the Court of Chancery the last 120 years had entered on the discharge of their duties in that Court with the firm determination to effect every improvement that could be effected in it, and as none of them had recommended, or proposed such a change as this, it was plain that it was not a species of change which they would be inclined to regard as an improvement." But our surprise at these objections is slight compared to the regret, which we, and all admirers of Lord Eldon, must ever feel, at his persevering negative on the abolition of the slave trade and the amelioration of our criminal laws. Against both these humane objects, worthy of a Christian legislature, the learned lord, misled by his regard for property and vested rights, exerted all his eloquence. We admire his firmness in rendering the House of Lords a sort of floodgate against the torrent of legislation which was rushing too impetuously through the Lower House, but cannot acquiesce in his reasons for attempting to roll back the tide of mercy and civilization.

"With respect," he said, "to a state of slavery being contrary to the genius of the British constitution, I must say, my lords, that when I find this system of trading was fostered, encouraged, and almost instituted by the British constitution,

and I might add, under the auspices too of so great a constitutional authority as my Lord Somers, I should hesitate a long while before I ventured to say slavery was contrary to the genius of the British constitution. With respect to a state of slavery being contrary to the genius of the existing religion, when I recollect that a state of slavery had for centuries existed, that the legislature of this country had encouraged it not only by the countenance afforded to it by the laymen who have figured in the history of this country, but also by a bench of bishops, as learned, pious, and respectable, as that which their lordships now saw before them, who must have known what was and was not contrary to the genius of the existing religion; I own I cannot easily bring myself to say that a system, which has heretofore received such a sanction, is so clearly contrary to the genius of existing religion as some noble lords seem to think it." These doubts and scruples appeared to be rather increased than diminished by the tide of popular favour running counter to them, and when the Slave Trade Abolition Bill was finally read in the House of Lords in 1807, the voice of the Chancellor was still loudly raised against it in prophetic denunciations of the future, and in appeals to authority. "If they consented to the slave trade on the coast of Africa, the application of the same principles would necessarily compel them to extend the abolition to the West India Islands. The slave trade had been sanctioned by parliaments, in which sat the wisest lawyers, the most learned divines, and the most excellent statesmen." He declared, that on this subject he had always differed from his illustrious friend William Pitt. He adverted again to Lord Somers and Mr. Locke, who did not think it wise or politic to oppose it. The Slave Trade went down, however, according to Lord Brougham's simile, with only sixteen commoners sticking in the shrouds, but thirty-six peers, among whom were the late king (then Duke of Clarence), Lords Westmoreland, Sidmouth, St. Vincent, and Hawkesbury. The gentle animadversions passed by Wilberforce on the timid and unwise policy of his distinguished friend do him credit. "The slave trade," he writes in his Diary (1804) "was opened by the Chancellor in a very threatening speech, because overrating property, and

full of all moral blunders, yet amiable in some views. He showed himself to labour with feelings, as if he were the legitimate guardian of property." "On the last occasion," he writes to an acquaintance, "our old friend Eldon grieved me," and notes down in his private memorandum, what must have been very true, "Lord Eldon humiliating."

The attempted reforms of Romilly were, in like manner, perseveringly frowned down by the Chancellor, under whose guidance the House of Lords, year by year, too successfully resisted those safe and salutary reforms which tended to humanize our statute-book. The offence of shop-lifting, he would argue, had increased enormously in the expectation of a bill for abolishing death for stealing to the amount of 5*s.* in a shop, passing into a law. "Was it an encouragement or a discouragement," he asked, "in the eyes of any man of common sense to commit a crime, that, instead of being hanged, if he committed it, he could, at the most, only be transported?" With grave and statesmanlike displeasure, Lord Grenville declared that such an argument proceeded from the school of Draco, and, if worth anything, only came to this, that death should be the penalty of every transgression. But Lord Eldon insisted that facts bore out his opinion, while he indignantly repelled the cruel corollary sought to be deduced from it. "The judges," he said, "having found a great number of horses had been stolen, announced publicly, that on the next circuits they would leave every man for execution, who was found guilty of the crime of horse-stealing. Between that and the next circuit not one horse was stolen in all England."

We doubt the fact, but not that the worthy judge implicitly believed it, for such stories are often circulated in favour of or against obnoxious systems, and readily find acceptance with believers in the efficacy of terror. In a discussion on the large discretionary powers with which the judges were entrusted, Lord Eldon, at the same time that he justified the discretion, related some interesting particulars of his own conduct as a criminal judge. "I feel great doubt whether it is not more advisable to leave the law upon its present system, and on its present method, of submitting to the discretion of the judge to discriminate the different shades of offence.

I think it would be unwise to divest a judge of the power which may be so often exercised with prudence and humanity. Within my own experience cases have occurred where, if the power was not vested in the judge, the greatest violence might have been done to the cause of justice and humanity. I will take the case of sheep-stealing. My lords, in the court in which I had the honour of once presiding as judge, I remember a whole family of persons were indicted for stealing a single sheep. It was a case of peculiar hardship. These poor people were driven to the commission of a capital crime by the pressing calls of hunger and famine; exhausted nature, no longer able to bear the restraint of human laws, threw aside every consideration of honesty, and these unhappy wretches committed an offence which subjected them to a capital punishment. Now, my lords, no man living could say that this was a case where the judge should have no discretion. There is no man living who could go through such a trial without feeling that he would commit a greater crime than the unhappy wretches themselves, if he permitted the law to take its course. But, my lords, I shall mention another case, where the principle is applicable in the other way, — I mean in the case of horse-stealing. I remember this remarkable case to have happened during the short time I had the honour of holding that situation. A man was indicted for stealing a horse of the small value of 5*s.*, which he had sold for that sum to a horse butcher. The jury found him guilty, and you will perhaps be surprised to hear that for so trifling an offence I suffered the law to take its course. The punishment of death for this offence might appear extremely harsh, but, my lords, in this instance I was guided by the nature of the evidence in the course of the trial, the details of which I have now fresh upon my memory. It appeared, I think, that on the prisoner were found skeleton keys of all the turnpike-gates within twenty miles of London, which he had manifestly procured for the purpose of carrying on the regular business of a horse-stealer. My lords, these are the difficulties that would constantly arise in the administration of a law which prescribed the particular species of punishment for a particular offence. While in the one case you would be

acting with the greatest possible severity, you would in the other act with the greatest injustice."

But however much we may agree with the Chancellor's vindication of a large discretionary power being vested in the judges, it must be admitted that he allowed his timidity to subdue his judgment, and made his humane feelings ancillary to his caution in withstanding all legislative attempts to mitigate the rigours of the penal code, even its punishment of fire and the scourge to women, and its nauseous penalties for high treason. He confessed that "in early life he had felt a disposition to criticise parts of the criminal law before observation and experience had matured his reason, but that since he had learned to listen to those great teachers in this important science, his ideas had greatly changed, and he had seen the wisdom of the principles and practice by which our criminal code was regulated;" a declaration which must sound strange to those who recollect the vast number of cases in which death has been since abolished with the almost unanimous assent of philanthropic and prudent men, and who bear in mind that at the period of his making such an avowal fresh penal statutes were constantly promulgated after the receipt of the old play, "as bloody as might be." But true to the last in his defence of property, he opposed the abolition of the punishment of death for forgery, contending that if the legislature remitted this dread penalty for such a deliberate offence, they would sacrifice to the cupidity of the abandoned that property which it was their duty to protect. It was well said by a writer who opposed his views on this question, that had he lived in the days of Queen Elizabeth, he would have used the rack according to the benevolent proviso of Lord Burleigh, "as charitably as such a thing could be," but that he would have been found voting and speaking against a motion for its disuse, so decided was the contrast between his feelings and his fears.* And yet they would wholly misread his character, and do much injustice to his moral worth, who should attribute this yearning for the integrity of our criminal code to any habitual indifference to human sufferings, or cal-

lousness of heart. The letter of the law was sanguinary, but no blame could be justly imputed to its administration. The Chancellor might recommend his sovereign to suffer executions to take place more frequently than the boundless compassion of some modern legislators might approve,; but he never sanctioned the infliction of the last penalty without the most anxious care. As a writer on our system of penal jurisprudence, Mr. Miller, has justly remarked, "In those cases in which the security or good order of society requires severity to be employed, the public officers on whom the infliction of it happens to devolve have their feelings sufficiently harassed in consequence of the restraint which their judgment is obliged to impose on their inclinations, without being at the same time accused of want of humanity, for no other reason but because they dare not conscientiously indulge in it." No one could be more painfully solicitous to do justice, and, according to the law as it stood, to love mercy. He never went to the King with the Recorder's report in his hand, without having carefully read and made an abstract of every case. To this humane diligence Sir Robert Peel, when Home Secretary, bore the following conclusive testimony: "It had fallen to his lot to send to the Chancellor at the rising of his Court to inform him that on the ensuing morning his Majesty would receive the Recorder's report, containing, probably, forty or fifty cases. On proceeding from the Court of Chancery the noble lord would, as was his uniform custom on such occasions, apply himself to the reading of each individual case, and abstract notes from all of them, and he had known more than one instance in which Lord Eldon had commenced this labour in the evening and had been found pursuing it at the rising of the next sun."

The conscientious humanity and love of individual justice, which dictated this extra-judicial toil, deserves the higher commendation, when we consider the multifarious duties which devolved upon him on quitting his Court. According to the method established in his time of deciding appeals, the whole anxiety and care of a renewed hearing fell to his lot, the illustrious conscripts who sat with him being secured only for a single day; and if the appeal proved long and in-

tricate it might, as was sarcastically observed, begin before an inexperienced youth of one-and-twenty, be continued by a general of horse, and ended by a yellow admiral. Thus, in effect, unassisted, he laboured with unceasing and impartial diligence to revise his former judgments, and gave satisfaction even under the disadvantage of an unsatisfactory system. His decisions on Scottish appeals in particular met with unanimous approval. But in addition to the multiplied appeals there was opened a large expanse of parliamentary toils. The sittings of the House of Lords had begun to extend late into four nights of the week, instead of the quiet, easy repose which former occupants of the woolsack had enjoyed, when occasional debates of two or three hours on some important topic, during two or three months in the year, comprehended the light task of legislation. The length and frequency of their meetings on subjects of grave public interest, imposed on Lord Eldon a more responsible duty than had fallen upon any of his predecessors.

Lord Erskine has given a lively description of the Court of Chancery in his time, in Armata: — "Like Milton's Limbo of Vanity, every thing that went wrong in the world was sure to be found here; and to swell the confusion, lunatics, mendicants, and bankrupts, even all the children of the kingdom were perpetually dancing around him; and, as if all this was not sufficient occupation, it was found out besides that he ought to be placed as a legislative president in the highest council, where, after having had his mind and body worn down by his judicial functions, he was compelled to sit and listen, 'e'en to the crack of doom,' to all that the most unexperienced had to say. I had a curiosity to see this great man, and thought it no small one to see that he was alive. He was a most able and agreeable man by all accounts, deeply learned in every branch of the law; tremblingly alive to the justice of decision, and most unwearied in the discharge of his multiplied and momentous trusts. I asked him how he could possibly exist in such a scene as I have described: he laughed and said to me, 'You may go and ask the first salamander you meet, how he lives in the fire. I have been here all my life.'"

From the performance of his duties he never shrunk, even in the minutest particulars, and obeyed the standing orders with an exact fidelity, characteristic of the man. The powers and functions of Speaker of the House of Lords, though far inferior in importance to those of Speaker of the Lower House, found in him an excellent representative. He delivered the thanks of the House with great dignity to the Duke of Wellington, and, standing covered, expressed in language befitting the president of the assembled peers, the honours due to the baron, viscount, earl, marquis, and duke, who then for the first time in the history of the peerage, took his seat with these accumulated dignities. The chancellor's address of congratulation to Lord Exmouth was also felicitous for its propriety and grace. His vigilance in preserving inviolate all the orders of the House was most exemplary, as might have been anticipated. He would not allow a petition to lie on the table which prayed their lordships to give some bill a cool and deliberate discussion, as it contained an impertinent insinuation. When the late King, then Duke of Clarence, persisted in putting irregular questions, the Chancellor, undeterred by the rank of the offender, left the woolsack to make a solemn protest against questions and conversations inconsistent with the regularity of their proceedings. The Duke having afterwards taxed the Chancellor himself with violating the orders of the House in addressing the lords more than once in the same debate, Lord Eldon displayed such vivid emotion and concern that the Prince of Wales immediately rose, and tendered a handsome apology to soothe his wounded feelings.

His indignation at a breach of order was sometimes expressed in terms too great for the occasion, as when he declared that, in the course of thirty years' experience he had never witnessed anything so monstrous and disorderly as the production of a newspaper in the House. He would now and then declare his anxiety to preserve the tone of debate and decorum of proceedings in a way calculated to provoke merriment among the younger members. "He (Lord Eldon) would not consent to remain ten minutes longer in his situation, if the House decided a certain point (against which he was declaiming) to be in order." When the Duke of Sussex

put some questions to Lord Liverpool, with regard to the elopement of the Princess Charlotte, and the prime minister had declined to satisfy his curiosity, the Chancellor rose to tell his noble friend, that, if had answered the first of these questions, he would never have conversed with him again. The following daring breach of privilege was opened by him to the House with a pathetic gravity, which it required all the respect due to his character and station not to treat as a burlesque. There was a standing order that strangers should not be permitted to appear below the bar. "The officer of their lordships' house had thought proper to discharge the order, and permitted them to appear, under certain restrictions, without sticks or umbrellas. A person presenting himself for admittance had been desired to leave his umbrella behind, which he did, and which was afterwards taken away. That person had thought proper to bring an action against the officer of the House to recover the value of the umbrella, and had taken upon himself—(the audacious leveller)—to serve him with process in their lordships' house." The most submissive apology and withdrawal of all proceedings of course succeeded.

When in the course of a debate on one of the Vice Admiralty Courts, Lord Suffolk showed a proctor's bill, opening it and laying it along the floor to a length of apparently twenty feet, Lord Eldon expressed his deep regret, a regret deepened, doubtless, by fraternal feeling, that a member of that high assembly should introduce a species of mummery never before witnessed in those walls. Long after resigning the seals when the woolsack was occupied by a more volatile Chancellor, the venerable peer, in the course of the discussion on the Plurality of Benefices Bill, called their lordships' attention to the fact, that, during the debate on such an important measure, the Lord Chancellor was absent from the woolsack without the plea of indisposition. He could state, without fear of contradiction, that three High Chancellors had never been absent without an explanation of the cause. The Speaker was never absent without stating to the Deputy Speaker that he was to be absent, and the reason for that absence. An apology was in consequence tendered, but on a

repetition of the offence this vigilant champion for the standing orders again renewed his censure, and fastened the fugitive to his seat. Lord Brougham having alleged the evening sittings in his court as an excuse, and stated that in another week he should have got through the whole of the business in his Court, the ex-Chancellor would not accept his justification. "The paramount duty of the Chancellor was to be in his place in that House during their lordships' sittings, and not to be employed elsewhere." For these rebukes Lord Brougham afterwards took a pleasant revenge. A preliminary debate having taken place on the Reform Bill without any substantive motion, and a succession of noble speakers having exhausted their invectives on the scheme, Lord Eldon rose, and took great shame to himself, "after thirty years' experience, for not having sooner risen to order. He took shame to himself, he repeated, for not having sooner risen." Lord Brougham sneered at the old peer's convenient discovery. "Not till he had listened to every single argument against the bill, did he discover the disorder. Since a quarter to six, it appeared, they were acting thus disorderly, and now a light broke in upon them, and the learned lord cried out, Gods! how disorderly we have all been these two hours; let us be so no longer, let us amend, and not sanction the irregular discussion, no not two minutes longer. It would appear that they had during these two hours of oblivion of the usages of parliament, for which the noble and learned lord had so mournfully reproached himself, exhausted all their disorderliness, and that, therefore, they could not for the souls of them continue so for a short time longer." We may smile at this apparently dexterous call to order, and readily admit that Lord Eldon, like Speaker Onslow, was sometimes laughed at for his particularity, but the strict observance of important rules and maintenance of order depend mainly on minute attention to trifles, and neither of these great Speakers would have had such honourable mention from posterity, had they not been rigid guardians of the most exact decorum. The office of Speaker in the Upper House is clothed with few of those prerogatives which accident and the pressure of business have enabled Speakers of the House of Commons in pro-

gress of time to assume; but it has one advantage, of which Lord Eldon freely availed himself. The Speaker is not only required not to decline, but expected to take a part, and a prominent part, in the debates.

As a debater among his brother peers, Lord Eldon, during his twenty-five years' continuance in office, exercised even a greater sway than might have been deemed extrinsically due to his character and station. Oratory was not his forte, but in the Upper House he was always listened to with marked attention, and would often silence, though he might not convince, opponents with his arguments of calm and persuasive wisdom. His gentle temperament had too much fine silver mixed with it for the alloy of the House of Commons — the derisive cheers — the not encouraging "Hear,"— the fierce agonistic personal contests had wholly unnerved Mr. Scott, and sometimes appalled the intrepidity of the Attorney-General. But in the comparatively small and aristocratic assembly to which he was ushered on being appointed a Judge, within whose quiet precincts, sacred from the profane vulgar, two lay peers and one spiritual peer are sufficient to constitute a house, where the discussion frequently assumes a colloquial character, and is almost invariably distinguished by perfect order and decorum, "to audience meet," "of grave and reverend seigniors," their Speaker was wont with ease to himself, and without premeditation, to deliver his sweet and honeyed sentences, to tell the pleasant story, relate some professional anecdote or joke, just good enough to provoke a smile, and on graver occasions, to draw from his stores of learning and experience, to inform, admonish, guide. His utterance in the Commons had been considered slow and somewhat embarrassed; he had there, and in court, a nervous trick of stroking his chin, as if to quicken the words that came reluctantly, and not trippingly to the tongue. But these defects had wholly disappeared in the House of Lords, where his style and delivery were compared for excellence to Lord Camden's — little raised above the tone of private conversation; he seemed to be arguing with a friend rather than contending with an enemy; it was the "mitis sapientia Laelii." He would sometimes advance a proposition that had

almost the force of paradox, and indulge in a sophistical sorites. For example, "the Habeas Corpus Act would have caused the greatest danger to the constitution, if parliament could not control parliament; if what was then enacted could not, on certain emergencies, be suspended;" and again, with regard to the meeting at Peterloo, "when he read in his law books that numbers constituted force, and force terror, and terror illegality, he felt that no one could say the Manchester meeting was not an illegal one." His terse saying, that the union of church and state was not to make the church political, but the state religious, has become proverbial for its felicity; — the text and motto to an important truth and a most salutary doctrine.

Of his dexterity in debate, Lord Eldon gave a remarkable instance in defending a privilege peculiar to the House of Lords, that of voting by proxy, when, owing to a particular combination of circumstances, in a discussion on the Regency question, it chanced to be warmly impugned. "It had lately," he said, "become the fashion to talk of this as an absurdity, that, what had been agreed to by a majority in a committee, should be reversed on the House being resumed, by a majority the other way, through the means of proxies. He should only say in answer, that the right of the lords to vote by proxy had been proved by the constant usage of parliament, and that it was no argument against a right or a privilege to urge that it might be abused. It might happen, — he was confident it had not hitherto occurred, — that when a debate had been going on from five o'clock, a peer might come in at two or three in the morning, and give his vote, although knowing nothing of the subject under discussion. It might also occur at some future period — he was sure it had never happened — that a peer might come in at the end of a judicial business, and give his vote, although he had not heard the arguments, and was ignorant of the point at issue. Was it, however, to be argued, that because these abuses might exist, that therefore any restrictions were to be placed on the votes of noble lords present? The same argument applied to proxies. In whatever way the vote by proxy was to be considered, if as a privilege, there was no reason

why their lordships should relinquish it; and, if as duty, it ought to continue to be exercised." Having proposed four resolutions in favour of proxies, he was opposed, with more than his wonted flightiness and indecorum, by Lord Stanhope, who thus gave his learned antagonist, in reply, the advantage of the pointed sarcasm, that, "After the speech they had just heard, it would be for their lordships to consider, whether it would not be better, consulting the dignity of that House, and the decorum of their proceedings, to vote always rather by proxy than in person." The division proved how nicely balanced the parties were, and how opportune for his friends was the Chancellor's interposition. There voted for his resolutions, Contents, present 68, Proxies 27 — 95. Not Content 67, Proxies 26 — 93. A bare majority of a single peer and a single proxy.

So great was the change produced by place and circumstances, that Lord Eldon often singled out in debate and overthrew his former antagonists at the bar, Ellenborough and Erskine. He had recommended Mr. Law to the office of Attorney-General, but their tempers and ways of thinking were too different to allow a close personal friendship. The Chief Justice, unaccustomed to control his feelings, and impatient of contradiction, would sometimes express himself in terms of turbulent freedom, especially when he saw, or fancied that he saw, an attempt at injustice. The capture of the Danish fleet was one of the themes on which he declaimed with the violence of a demagogue rather than the tone and temper of a senator. To the ponderous acrimony and high-toned declamation of the learned judge, Lord Eldon applied, quitting distinctly the woolsack, a rebuke equally grave and dignified. "He would take the liberty of expressing his sentiments in the same decisive tone as the learned lord, and say, that so far from feeling himself dishonoured as an Englishman by the expedition against Copenhagen, he should have felt himself dishonoured, if under all the circumstances he had hesitated to concur with his colleagues in advising the expedition." Lord Ellenborough having said that it was very convenient for the country to appropriate to itself the property, which another who had the right to it was possessed

of—that it was a sort of doctrine he was so much in the habit of hearing at the Old Bailey, that he could not avoid expressing himself with some warmth; the Chancellor pointedly retorted,—"The country would feel this great national question ought not to be decided altogether by the ordinary rules which governed decisions at the Old Bailey; but at all events he should hope if his noble and learned friend were reprobating the principle before a jury at the Old Bailey, he would not forget, when he stated his opinion, to detail the evidence on which that opinion was founded."

With the volatile ex-Chancellor, his good-humoured successor would often play at tricks of fence, using friendly foils and not "unbated swords," but in the trial of skill to prove which was best master of his weapon he sometimes drew blood. Lord Erskine used to dwell with self-complacency on those scenes of his early triumphs, the state trials, and loved to inform the lords how the grateful multitude drew him home every night in his chariot. One evening Lord Eldon broke the charm of this favourite narrative, by mischievously suggesting that his friend forgot to mention that, on the last occasion when the mob took the horses out of his carriage, they forgot to bring them back. The manner in which he foiled a more ambitious effort of his clever rival was still more amusing. This consummate actor on his proper stage, where he had gained and deserved universal approbation, when driven in a state of splendid exile to the House of Lords, seemed to dwindle beneath his former stature, to shrink within himself, and, in the absence of a favourable audience, to lose with self-confidence and the consciousness of sympathy the witching magic of his oratorical power. On the occasion of the Seditious Meetings Bill, caused by the tumults of 1817, he delivered with visible effort a rhetorical effusion, of which the labour was more conspicuous than the success. "If the author of this bill had the government of the seasons, the elements of fire, water, and air would no longer have their immemorial liberties. To fire they would say, you are an excellent servant, most beneficial when under due discipline, but most dangerous when left unrestrained; you may therefore continue to blaze in our kitchens and our chambers, but

you shall no longer descend from heaven with electric flashes. To air they would say, if you should presume to blight our fruits, or destroy our harvests, you shall be driven back to your caverns by a single justice of the peace!" We need not pursue farther these figurative spirits of the rhetorician, which, out of keeping with the time, place, and subject, were effectually laid amid the laughter of the house by the Chancellor's good humoured reply. "A noble lord on the preceding night had moved an amendment with respect to lectures on physical science. He supposed it was to this they were indebted for the learned dissertation they had heard upon fire, water, and air. His learned friend had spoken of controlling these elements, as if they had been living within the jurisdiction of this country, as British subjects, and liable to be regulated by acts of parliament; as a member of their lordships' house he wished they were subject to their jurisdiction, for there was a fire in the house, which, whether it operated on the constitution of the country or not, certainly often operated on his constitution and that of others in no very favourable way; and, if they could restrain the mischievous effects of that fire by any clause in an act of parliament, their lordships would do a great deal of good to themselves. So with respect to air, it was a great misfortune that it was not a British subject within their lordships' jurisdiction, for then out of regard to a most respectable friend of his then present, the clerk at the table, who found himself so ill at ease when the windows were open, he was sure their lordships would be very glad to put the air under some regulation, and to leave no parliamentary means untried of shutting out the intruder. As to water, he believed neither their lordships in general, nor his noble and learned friend in particular, had much to do with it; but he really could not believe that his learned friend was very serious in his opposition to the bill, when he considered that so great a portion of his speech was made up of long quotations from the philosophical theories of Mr. Burke, and those whimsical observations about fire, air, and water."

The most elaborate specimen of Lord Eldon's oratory in the lords was his printed speech on the Queen's trial, in 1821,

in which he discussed the details of evidence tending to criminate and convict that unhappy personage with singular shrewdness. The peroration is entitled to high praise for its spirit of calm fortitude and appropriate dignity. "One word more, my lords, and I have done; as to what has passed or is passing out of doors I will take no notice of it, for I am not supposed to hear or to know any thing about it; only this I will say, that, whatever has happened, or whatever may happen, I will perform my duty here. But in the course of this solemn inquiry your lordships have heard from the bar of this house what I was very sorry to hear, and what I believe was never before addressed to a court of justice. Something like a threat was held out to your lordships, that, if you passed judgment against the Queen, you never would have the power of passing another judgment. I do not profess to use the words of the speaker, but the impression is distinct upon my mind. My lords, however that may be, I will take upon myself to declare that an address of such a nature, such an address of intimidation, to any court of justice has never until this hour been deemed consistent with the duty of an advocate, and that such an address, whether an advocate has a right to make it or not, ought to have no effect whatever on your lordships. You stand here as the great and acknowledged protectors of the liberties, the character, the honour, and the lives of your fellow subjects, and you cannot discharge that high trust a moment longer than while you can say to one another, and for myself, if I had not a moment longer to live I would say to you, 'Be just and fear not!' My lords, I know the people of this country, I am sure that if your lordships do your duty to them by preserving their liberties and the constitution which has been handed down to you from your ancestors, the time is not far distant when they will do their duty to you; when they will acknowledge, that those who are invested with the great judicial functions of the state ought firmly to meet all the reproaches, to which the faithful performances of those functions may expose them—to court no popularity, to do their duty, and to leave the consequence to the wisdom and justice of God."

Lord Eldon declared that he had entered on this grave,

judicial, and legislative proceeding, a source of deep anxiety to the Chancellor both for public and private reasons, in the spirit so well described by an eminent English judge, who had made a covenant with God and himself, that neither affection nor any other undue principle should ever make him swerve from the strict line of duty. It was sought to embarrass him on her Majesty's landing by confiding to his care a petition which she wished to be presented to the House of Lords, but he at once declined the task, saying, that it appeared to him better that it should be presented by any other noble lord than himself. He declared, using a characteristic figure of speech, that no feeling of disrespect to the illustrious person had influenced his conduct: he was ready to aver in the face of the whole world, that he would rather suffer death than admit of any abatement of the principle that a person accused is not therefore to be considered guilty. In the discussions that suddenly arose on novel points of evidence Lord Eldon displayed singular acumen, and conducted the trial (for into such the Bill of Pains and Penalties resolved itself) with dignified firmness, but perfect equanimity. Having, through mistake of his meaning, interposed when a counsel was speaking, he at once apologized, observing, that no man who acted as a judge could expect to be treated with respect, unless he showed respect to others. "He, therefore, thought it right to state, that having found that he had misunderstood the object of Mr. Williams he was sorry that he had interrupted him." But though courteous he would check the least attempt at imposition, and keep even Mr. Brougham in order, — a feat almost as difficult as holding quicksilver fast in the hand. That advocate having requested permission to comment on the evidence for the crown, and then adjourn the defendant's case, was informed by the Chancellor that such a course could not be permitted. The counsel complained of what he was pleased to call his unprecedented situation, and asked the delay of a day to come to a resolution. The Chancellor replied, — "Your lordships have placed the counsel in that very situation which is the situation of counsel in all proceedings in

all courts. I apprehend, however, that you will undoubtedly feel it perfectly reasonable to accede to his request."

The weight of testimony to the Queen's guilt appeared so overwhelming as to compel the declaration from Lord Eldon, that no man had ever been guilty of more cruelty and injustice than he had been, in acting upon the evidence in divorce causes, if the evidence on the table was not sufficient; and, however party violence might affect to disbelieve it, the declaration could not but give him pain. He had formerly united with Canning and Perceval in offering confidential advice to that unhappy personage, then Princess of Wales, and had been a favourite guest when she resided at Blackheath. The right-hand seat at the dinner-table was always reserved in 1806 for the ex-Chancellor, whose conversation had sufficient festive gaiety to delight the vivacious foreigner. And though many long years of absence, travel, and defilement had intervened, to throw a deep and dark shadow over the object of his faithful councils, the past could not wholly be forgotten. "Seeing," says Bentham, "with the sure glance of the keen eye set in his long pondering head, the mischief the Queen's trial was calculated to produce, the Chancellor strongly advised against it." He betrayed no confidence, and abstained from all personal acrimony, but he had a duty to perform to his sovereign, from which he could not and did not shrink. That he truckled to the private resentment of George IV. to preserve his office, was a calumny loudly urged and reiterated by faction, but unjust. He had previously requested permission to resign, and held the seals some years longer at the importunate desire of the Court, and entreaties of his colleagues. At the very time the walls of St. Stephens rang with complaints of his determination to retain office to his dying day, and then transmit it as a legacy to some chosen successor, he had sought an interview with the monarch, and offered to retire.

The Shibboleth of his policy was attachment to the Established Church. On the death of Lord Londonderry his jealous fears for its safety had been quickened by the elevation of Mr. Canning, the most high-minded and powerful advocate for Roman Catholic emancipation, to the post of

foreign secretary; and nothing but a conviction that the king, the premier, a majority in the cabinet, and the House of Lords, were firm against concession, could have induced him to unite with that enterprising minister. Never had the Church in her relations with the State a more staunch and zealous defender. Against the private and publicly expressed opinion of Lord Liverpool, he resisted successfully the first of a long series of concessions to dissent, the Unitarian Marriage Bill. "It was a sin at common law," he asserted, "to deny the divinity of Christ; and if so, their lordships should begin with repealing the common law, and not with passing an act of parliament in the teeth of it." In consequence of these and other stringent remarks, he received a sermon preached by a minister, before a Unitarian congregation, in which the first words were, "The Lord Chancellor asks what is an Unitarian?" The sermon, he declared, though it had this singular commencement, was a very good one, as far as he could understand subjects of that nature. But he still persisted in his question, Was an Unitarian a person who denied the divinity of our Saviour? He should be exceedingly glad to get a definition. What was objected to in the marriage ceremony was, the mention of the godhead under the name of the Father, the Son, and the Holy Ghost, when the clergyman at the end of the ceremony prayed the blessing of God upon the man and wife. "The calling upon God to bless them under the terms of the Father, Son, and Holy Ghost, was what these persons deemed so great a hardship. Every Christian of common honesty and integrity, when he said 'God bless you,' meant the godhead in its general acceptation. It was on such grounds their lordships were called upon to make a law, not for the benefit of dissenters of other denominations, but for this particular class of dissenters, which, according to all the evidence of history, held doctrines of a more offensive description than any other class."

Notwithstanding his earnestly urged objections, the Chancellor found himself in a minority, 54 to 61, and though the bill eventually failed that session, he saw with alarm that the period of its becoming law was not remote. When, in rapid succession, the Duke of York and Lord Liverpool passed

away, and Mr. Canning kissed hands as premier, Lord Eldon perceived the time was come for resigning. He could not assist in undermining the bulwarks of the church; the new first lord of the treasury was equally incapable of treachery; but they differed altogether in their ideas of what were bulwarks, and what the one would have resisted, the other insisted on preserving for security to that church which they both loved and valued. Lord Eldon resigned the seals in March, 1827. His retirement from office was soothed by the regrets of the King, the hearty sympathies of troops of friends, the respect of the people, and the acknowlegements of the generous prime minister, that, however much concert might be imputed to others, his conduct had been without reproach. When most indignant at some of his late colleagues, Mr. Canning declared in the House of Commons that it was bare justice to Lord Eldon to say, that his conduct was that of a man of the highest feelings of honour, and throughout it had been above all exception.

The danger which he had long foreboded came at length, but not from the quarter that he had looked for it. The dreaded Canning died in five months after the Chancellor's resignation. When that gallant spirit was at rest, and an imbecile administration — a body without the soul — had given way to the Duke of Wellington, it was naturally expected that, having quitted office with his late colleagues, Lord Eldon would have returned to the cabinet with them, though not in the same situation. There is good reason for believing that he would have accepted the post of president of the counsel, or privy seal, offices that did not impose any onerous duty, but these posts of dignified repose were reserved for younger, not better, peers, unpledged against concession; and being deemed invalided, he had not even the opportunity of refusing. His presence would have checked ministers in their downward path of concession on all ecclesiastical matters, but might possibly have retarded some beneficial changes, and have interfered with several salutary legal reforms. Early in the session he found himself, for the first time in his political life, in active opposition to the leading measure of a Tory government, acting upon Whig prin-

ciples. Defeated in their opposition to the repeal of the Test and Corporation Acts by a majority of the Commons, government adopted the scheme, and took it up in the lords with the fondness of a foster parent for a sudden favourite. Greatly to the surprise of Lord Eldon, he heard the repeal advocated by several of the prelates of the church. "Much as he had heard," he said, "of the march of mind, he never expected to see it march into their lordships' house, with the Duke of Wellington and the Bishops consenting parties. For my part," concluded the stout-hearted old peer, "I will not give up the church; let that be the work of others,—whether within or without the church I care not." He laboured manfully in committee to add some additional restricting clauses, and, when he had failed in all, recorded his deliberate protest. "He solemnly said to the Test Act Repeal Bill *not content* from his heart and soul. He could not consent to give up the constitution, as well as church establishment, to the extent the present bill proposed. He could not do this. It must be the work of others. Be they within or without the church, it mattered not to him. If every man in that house supported the bill, he alone would go below the bar and vote against it. He did not praise the church for their abstinence from petitions. If restless activity on the one side was only to be met by dormant apathy on the other, let the consequences rest upon them, and not upon him."

The years which followed this first inroad were marked by constantly recurring aggressions on the Church of England; one session it was sought to dissociate the church established by law from the state, and in the next to dissever Protestantism at large. As one blow rapidly succeeded another, like the strokes of an active woodsman, Lord Eldon might be compared to the ancient Druid defending his consecrated grove; or, to apply a classical description of Virgil, he resembled some very old laurel tree protecting the once mighty Altar in its hour of exposure,

> "Ædibus in mediis nudoque sub ætheris axe
> Ingens ara fuit, juxtaque veterrima laurus
> Incumbens aræ, atque umbrâ complexa Penates."

In 1829, seconded by a large proportion of the people of England, he struggled with the strength of despair against the unconditional grant of Roman Catholic emancipation. His early, matured, and late opinions, which he always maintained in private as in public, were, that the admission of Roman Catholics into parliament would be unobjectionable, provided sufficient protection could be given against their attacks on the establishment, and, though he confessed he could not himself imagine or divine any plan for effecting this, he conceived it not impossible that others might be more successful. A circumstance which occurred when he was attorney-general had made an indelible impression on his mind, and strengthened the surmise to conviction, that the declarations of men 'who paltered with us in a double sense' were not to be trusted. By the act of 1793, any Roman Catholic admitted to office was made to swear, "I will not exercise any privilege to which I am or may become entitled, to disturb and weaken the Protestant religion, and Protestant government in this kingdom." The signification of this oath turned on the word "and." By a jesuitical interpretation it was conveyed to the Roman Catholics of Ireland, that, except they disturbed as well as weakened, they did not break their oath; and that, though they might not weaken by means of disturbing, they might conscientiously and safely weaken by any other means. We cannot wonder after this that he should deem the safeguards of 1829 wholly fallacious, as indeed they were, and altogether insecure. He presented between nine hundred and a thousand petitions against that destructive scheme, one in particular signed by 100,000 resident householders of London and Middlesex, with the descriptions and addresses of each, and another from Liverpool so large that a porter could with difficulty bear the immense roll of parchment on his shoulders to the table of the house. In enforcing the prayer of these petitions, the old peer displayed all his former spirit and address. Having declared that he had received one signed by a number of ladies, and expressed his intention to search the journals to ascertain whether such a petition were regular, Lord King inquired with a malicious quip, whether they were very old ladies. Lord Eldon retorted

that he knew many old women who had more good sense and more upright feeling than the descendants of some chancellors. In another round, the old peer had the best of the encounter. One of the petitions which he had presented was from some tailors at Glasgow, who disapproved of the change in the opinions of the leaders of the government. When he laid it on the table, Lord King, who was very zealous for the Bill, cried out, "What! do the tailors trouble themselves about such a change!" "No wonder," replied Lord Eldon; "you can't suppose that tailors like turncoats."

In the debate on the second reading, which lasted three nights, two of the most eloquent advocates for emancipation, Earl Grey and Lord Plunkett, reserved themselves avowedly with the intention of answering the ex-Chancellor. He spoke with less than his usual animation on such an inspiriting theme, and evidently shrunk from the encounter. A few days afterwards in committee he confessed with much frankness that he did not like to oppose himself, under the influence of a teasing gout, to the formidable alliance which was formed by those who took different views on the subject, and illustrated his prudence by the following anecdote:—"I was once at Buxton with my venerable friend Lord Thurlow, who went there for the benefit of the waters. I called on him one evening at the inn where he was sitting, when he told me that he had heard there were six or eight persons in the house who meant to have a dash at the ex-Chancellor in the bath next morning. I asked him what course he intended to take, and he replied prudently that he meant to keep out of the way. The misfortune is, I have not been able to keep out of the way of those who have been anxious to have a dash at me." But though averse to the combat in solemn debate with younger rhetoricians, the venerable peer spoke some home truths in committee more effective than the best rounded periods of eloquence. He declared that, if religion had nothing to do with politics, the present reigning family had no right to occupy the throne, and asserted that the people of England could never find a solid security for their liberties in excluding a papist from the throne, but surrounding a protestant king with popish advisers. He would tolerate, but

not encourage, much less do any thing to establish, religious error; and in his wrath* at the general tergiversations which prevailed, spared neither the trimming prelate nor the recreant lawyer. In this spirit he expressed "his utter amazement at hearing a prelate state that the coronation oath was not binding on the king in his legislative capacity. If so, no oath was of any use." On Lord Lyndhurst mentioning in the course of his argument, that Roman Catholics sat in parliament under our Protestant government, Lord Eldon interrupted him with the sarcastic question, "Did the noble and learned lord know that last year?" and when the Chancellor coolly replied, that he did not, but that he had prosecuted his studies since, his predecessor explained in a tone of banter justified by the provocation, "I can very well see that a Protestant Lord Chancellor may be very much under the influence of a powerful prime minister."

In his last address on the third reading he said, with solemn energy, "I would rather hear that I was not to exist to-morrow morning than awake to the reflection, that I had consented to an act, which had stamped me as a violator of my sacred oath, as a traitor to my church, and a traitor to the constitution." Having failed in alarming the king by a private interview at Windsor to exercise his veto, though he abhorred the measure as much as his faithful councillor, and

* In Moore's Life of Byron, that noble lord is made to say, "In one of the debates on the Catholic question, when we were either equal or within one (I forget which) I had been sent for in great haste to a ball, which I quitted, I confess, somewhat reluctantly, to emancipate five millions of people. I came in late, and did not go immediately into the body of the house, but stood just behind the woolsack. Lord Eldon turned round, and catching my eye, immediately said to a peer, who had come to him for a few minutes on the woolsack, as is the custom of his friends, 'D——n them! they'll have it now. By G—— the vote that is just come in will give it them." This statement would seem to impute considerable energy of expression, as well as feeling, to Lord Eldon on this subject. But the habit of mystifying, in which the poetical lord indulged, renders the truth of his story problematical. The expletives, we are inclined to think, he brought with him into the house. His virus he showed in some doggrel written in continuation of the Devil's Walk:

> "And he saw the tears in Eldon's eyes,
> Because the Catholics would not rise,
> In spite of his tears and his prophecies."

the startling majority of 109 having sealed its fate in the Lords, he bade the House farewell in a moment of despair, and expressed his sorrowing conviction that the sun of England had set.

Much idle merriment has been wasted on this strong figurative phrase, and puerile triumph evinced, that the seasons here should have experienced no perceptible change. The leading advocates for the measure — who prophesied that the grant of emancipation would be like oil poured on the troubled waters and prevent all further agitation, that it would strengthen the church in Ireland, that it would save that country 50,000 bayonets, that all would be henceforth harmony and peace (these and similar prophecies were braved by the orators for concession), and who laughed at the notion of danger to the church from some half-dozen Roman Catholics, the maximum number likely to stray into the House — are surely disqualified from sitting in judgment on Lord Eldon. When we recollect what has been attempted and what accomplished in the space of ten years — ten Protestant bishops cashiered, to apply a military metaphor to a church strictly militant — one-fourth of the revenues of that church confiscated and the remainder threatened — thirty Roman Catholic members voting for the abolition of church-rates — a portion of church property appropriated to the state — the poor alienated from the rich by schemes of rigour — the ties of marriage slackened, and social institutions tampered with; when we remember that a few years back was seen the sad spectacle of a people without confidence, and a government without power, domestic insecurity, colonial insurrection and foreign dishonour, we may be excused from thinking that the light has been dimmed in our political horizon, and, if the sun of England has not set, that it has been in eclipse.

Through the schism made by this fatal gift of unconditional emancipation issued the Reform Bill. The aged peer, though no longer sustained by the people, hastened back to his place in parliament to withstand the popular delusion with as much spirit as when thousands had been shouting encouragement. "His thoughts," he said, "were how to serve, not how to please, his countrymen, and so that he acted for them, he did

not greatly care whether or not he acted with them." When taunted with returning to the House which he had threatened to quit for ever, he made this mild and memorable reply, "I certainly thought that was the last opportunity I should have of addressing your lordships. I felt myself called upon by a sense of duty which I could not resist from the moment when my sovereign called me to a seat in this House, as long as my strength permitted me, to offer myself and my opinions to the suffrages and approbation, or to the dissent and reprobation of my fellow-subjects, and to them I boldly appeal after the delirium of this day shall have passed away."

CHAPTER XI.

THE LIFE OF LORD ELDON CONCLUDED.

THOUGH his impressive warnings were too slightly heeded, Lord Eldon, the Nestor of the House in age, and the Scævola of his profession in experience, still persisted for a few years subsequent to the passing of the Reform Bill in urging appeals upon the assembled peers against a too facile compliance with popular demands, or any surrender of their undoubted privileges. "The high in rank," he said, "the high in mind, the high in opulence, ought to unite in securing the independent powers of the House of Lords." He denounced with patriotic firmness the unconstitutional scheme, which a majority of the Grey cabinet had advocated to their shame, of stifling the expression of opinion in that branch of the legislature by a large creation of unilateral peers.

"He would fearlessly affirm that any of the acts of James the Second were as excusable as would be the act of that monarch, who should give his sanction to such a measure:" a bold but memorable declaration. "His life," he declared, "was of little value, and his property might be transferred to fructify in the pocket of some otherwise pennyless financier. He could not think with satisfaction on the effect of a system which might send the sovereign of a country abroad to provide for himself as a teacher of music, or mathematics, and import him back as a Citizen King. Bred as he had been in loyalty, living under the law, and revering the constitution of his country, now that he had arrived at the age of eighty he would solemnly declare that he would rather die in his place than not state, that the proposition that the Peers of England had no interest in these popular questions, was the most absurd one that had ever been propounded there or elsewhere. He would not belie every act of his former life." At the age of eighty it was not in the course of nature that

he could long 'vex the dull ear of the House,' or 'lag, superfluous veteran, on the stage.' His voice had become too feeble to be audible beyond the verge of the peers who sat immediately around him. He was listened to indeed with grateful assent, or respectful silence, for none could refuse their tribute of admiration to the vigorous spirit, and unswerving sincerity, of the octogenarian statesman. They could even forgive the testiness natural to his time of life, into which these perpetual innovations betrayed him. "Their lordships lived in times in which nothing surprised him. He should not be surprised if a north-west passage were discovered to-morrow: he should not be surprised if the discovery of the longitude, that desideratum through so many ages, should immediately follow the former discovery; but if any thing could surprise him, he should be surprised at hearing that any man could sit in either house of parliament without taking the oaths which by law were required." The startled peer was soon exposed to a surprise still more unpleasant, the agitation of legislative measures, then first openly avowed by men in authority, for alienating the revenues of the Church of England established in Ireland. "He would solemnly deny that the State had any right to appropriate the property of the Church at all. He now left behind him as his most solemn and deliberate declaration that no lawyer on earth could prove that, according to any known principle of law, the surplus in question could be appropriated to any other than Church purposes."

In 1834-35, as the infirmities of age stole upon him, he began to relax in the punctuality of his attendance, and to withdraw from consultations over which he exercised a waning influence, and which, in his opinion, neither tended to the good of his Church, nor the safety of his King and Country. One of the last legislative proceedings in which he took a part was the Liverpool Freemen's Disfranchisement Bill, a vindictive party measure, and opposed to his sense of political justice. True to himself, he resisted this as he had every former attempt of a similar nature, and to his great content succeeded. Against the Municipal Corporation Bill, though too much enfeebled to attend the discussion, he protested loudly in private, with feverish alarm, as leading directly to

confusion. Its interference with vested rights shocked his sense of equity even more than the sweeping clauses of the Reform Act. To set at nought ancient charters as so many bits of decayed parchment, and destroy the archives of town-halls, seemed in the eyes of the old Magistrate, for so many years the guardian of corporate rights, a crowning iniquity. He would have gladly voted a special commission, according to Sir Charles Wetherall's joke, though far from sharing in his merry humour, to try the Cabinet for corporation-breaking. Pale as a marble statue and confined to his house in Hamilton Place by infirmity, he would deprecate equally the temerity of ministers and the madness of the people; and his vaticinations, like the prophet's scroll, were full to overflowing with lamentations and woe. His correspondence for some years previously had borne marks of the troubled gloom with which he viewed the changes gradually darkening over all he had loved and venerated, till he felt almost a stranger to the institutions of his native land. I was favoured by his friend, the late Sir Robert Vaughan, the hospitable Tory baronet of North Wales, with the following letters highly characteristic at once of the old Earl's urbanity and depression.

"Dear Sir Robert,

"I owe to your kindness, and I beg you to accept my best thanks for, some moor game which I received here yesterday. You cannot conceive how this token of long-continued kindness to me exhilarates the old man who has through life esteemed you.

"The House of Lords seems at last to have thought that it ought to do its duty.

"I think the Houses will be involved in collision when they meet.

"I trust the cause of my country to that Great Being who alone can say to the madness of the people, as he can to the raging waves of the ocean, 'Hither shall you come, and no further.'

"Let us begin to do, and persevere in doing, our duty; and then, discouraging as the prospect is, we may hope for better days.

"Your much obliged,

"Encombe, 8th Sept. "ELDON."

The letter of a later date is marked by a tone of equal despondency.

"Dear Sir,

"Many, many thanks to you for your kind remembrance of me.

"Your kindness gives a support to my constitution, almost worn out by age; and which, nevertheless, will survive, I fear, if it has not already survived, the constitution of my country.

"Again many thanks to you from

"Your obliged and faithful friend and servant,

"ELDON."

To his intimate friend and *protégé*, Mr. Wm. V. Surtees, his confidential letters form equally a Jeremiad of threatening prophecy:—

"You mention Ireland, and you mention reduction of rents. These are melancholy subjects.

"That rents must, after being already greatly reduced, be still more and largely reduced I have no doubt; and the land owner, and the owners, indeed, of every species of property, have to look for more calamitous days than those descriptions of men have ever yet seen in England.

"As to Ireland, all I hear leads me to fear that the Union will be repealed. I thought when I struggled against the Roman Catholic Bill that this might, nay, must be, the consequence; and now England, favouring the Catholics in Ireland in all things, has driven the Protestants, the Orangemen, to join, I fear in this project of repeal.

"This country is certainly in a worse state than you and I have ever known it; and I see no signs of improvement."*

His note of a later date, though still prophesying in the spirit of Cassandra, did not anticipate the last and, perhaps, the greatest change of all, the repeal of the corn laws.

"I am very glad to hear so good an account of the Norfolk crops; but I confess I don't consider (if Mr. Willis's letters to me are right as to fact) that these great crops will be as beneficial to the landlord or tenant as one might, in other circumstances, have hoped; for he assures me that they have very good crops, but that the corn imported from abroad is already in quantity so great that our corn cannot sell so as to enable the farmer to get a price which will enable him to pay his taxes and his rent. As to the political changes which are going on abroad, and which are leading to political changes here, it seems by no means improbable that even

* Sketches by Mr. W. E. Surtees.

you and I may live to see England without a rag left of the constitution under which we have so long lived."

The "times were out of joint," and men of the firmest minds looked with alarm at the troubled aspect of political affairs, but the nerves of the ex-chancellor were unstrung by domestic bereavements. He had now, "in his reverence and his chair days," according to the sad but common lot of those who live very far into years, a comparatively solitary home. The first severe domestic affliction of Lord Eldon dates so far back as the 24th of December, 1805, on the death of his eldest son John, who had only a year and a half previously married the daughter of Sir Matthew Ridley, and had become but ten days before the father of the present Earl. The Hon. John Scott was of an amiable disposition and graceful mind, full of jest and frolic in society, but too convivial for a delicate and asthmatic constitution. He had then been suffering from a slight indisposition and from much anxiety, but his death was very sudden, and shocked his father the more as he might have been present at the time. In the morning no apprehensions of his being in danger were entertained, and Lord Eldon had left home to attend some pressing business, but in the course of the day a communication of an alarming nature was forwarded to him, requesting his immediate attendance on his son. Accustomed to hear of his ailments, and unfortunately supposing that the danger was exaggerated by the natural fears of a mother, he continued his occupation, and when he arrived, his son had just expired. He was a man of excellent abilities, but neglected, and suffered to run to waste from an excessive addiction to society. With an overweening fondness (similar to that displayed by Burke) Lord Eldon formed an undue estimate of his talents, and was accustomed to defer to his opinion on subjects upon which he had himself a far superior judgment. He suffered no further domestic bereavement till the dark days came of extreme old age, and he was left alone to sorrow. On the 28th of June, 1831, he lost the companion of all his cares, with whom he had taken sweet counsel for sixty years, Lady Eldon. Her death was followed by that of his youngest and only other son in the July of 1832; and, though he had still

many domestic ties, and a grandson, the present Earl, grown up to manhood, his home was not what it used to be, and saddened with remembrances of the past. His poor brother too,

> "Amerced of sight,
> With knowledge at both inlets quite shut out,"

bodily and mental alike, remained an appalling warning to one so near in age, in blood, in constitution, and in intellect. The current of his warm fraternal affection had not been chilled by age. A short time before his death he busied himself in erecting an obelisk on a conspicuous promontory on the grounds at Encombe in honour of Lord Stowell, and visited the chapel of University College, that he might recall the young impressions of his brother. From a state like his, Lord Eldon, by a far kinder dispensation, was preserved. His memory, indeed, failed him considerably during the few closing years of his life; but his intellect, though not quite in its pristine vigour, remained good to the last. A near connection, the Rev. Mr. Repton, was accustomed to visit the old peer every Sunday to read the service of the church, and assist in his private devotions. His death was painless, and heralded by no particular disease, but that for which physicians have no name, and medicine has no cure, the breaking up of the constitution in extreme age. "The weary wheel of life at length stood still." On the day of his death, the 13th of January, 1838, when Mr. Penington, his medical attendant, as he entered his room, observed that "it was a cold morning," the old peer replied, "To me it matters little whether it is hot or cold, for I am quickly hastening to another climate," so calmly did he, even then, anticipate his dissolution. He expired at his house in Hamilton Place about four o'clock in the afternoon of the same day, having realised the praise given to Ormonde, of being a sincere Christian, a sound lawyer, a good Protestant, and an honest Englishman. The body of the ex-chancellor was removed on Monday, January the 22d, for interment at Kingston in Dorsetshire, the parish in which his estate of Encombe is situated, and within the precincts of whose church Lady Eldon and his younger son had already been interred. The regard in which his memory

was held was evinced by the long train which attended his remains for some distance from London — a procession of more than eighty carriages, including those of princes of the blood, the Archbishop of Canterbury, and others of the highest rank. With that impulsive kindness which forms such an attractive part of his character, Lord Brougham wrote to the family to request permission to send his carriage in token of respect, and the request was of course at once acknowledged and accepted. Some were, indeed, missing, who might have been expected, from old associations, to be eager to show this empty tribute of regret, but the omission may be ascribed to accidental absence, and his friends would ill imitate the old earl's placability of temper, were they to dwell upon it. We have been assured by a most intimate companion that it was a moral impossibility for Lord Eldon to cherish anger against any one for twenty-four hours together. After Abercrombie's motion in the House of Commons, which must have occasioned him great anxiety and pain, he desired a common acquaintance to express to that gentleman in conversation, that the Chancellor retained no resentment for what had passed, and none who knew the temperament of the man could disbelieve him. The barristers who practised in his court might arraign his conduct with the most perfect confidence that no change would occur in his courteous address to them from the bench, and no remembrance to their prejudice be left. Six of the counsel who practised in his court voted against him on Lord Grey's motion, one of a most harassing and personal nature, with the certainty that neither by look nor tone would they perceive any mark of irritation. The sun never went down upon his wrath. He was the single exception to the general rule, that no chancellor has long preserved his temper.

Of that benevolent disposition which always prompted him to say the kind word, and perform the kind act, which knit the hearts of domestics, and hallowed the relations of home, his countenance was the striking index. He had been considered remarkably handsome as a young man — about the middle size, of a light active figure, he had a frank open address, and bore, what Lord Chesterfield termed, a pretty

letter of introduction * in the small regular features, the bright full eye, and the fair and ruddy complexion. He studied neatness in his dress without foppery, and had the presence of a gentleman. The advance of years rather increased than detracted from these personal advantages. According to the description of a keen observer, the deep thought betrayed in his furrowed brow — the large eyebrows overhanging eyes that seemed to regard more what was taking place within than around them — his calmness that would have assumed a character of sternness but for its perfect placidity — his dignity, repose, and venerable age, tended at once to win confidence and to inspire respect. It was said of Lord Hardwicke that when he delivered his decrees, wisdom herself might be supposed to speak. A like flattering eulogy may be paid to Lord Eldon's appearance on the judgment-seat. He seemed the very representative whom Themis would have chosen to pronounce her decisions, and the response of the oracle was worthy of the shrine. The most faithful likeness, and taken with the artist's wonted appreciation of character, is the portrait of the Chancellor by Sir Thomas Lawrence, engraved by Doo, in 1828. As the head of an old man it has been pronounced scarcely inferior to the celebrated portrait of Gevartius, by Vandyke, in the National Gallery.

By Lady Eldon the earl had two sons and two daughters.

1. The Hon. John Scott, who in 1801 succeeded his father as member for Boroughbridge, and dying in his 32d year, left issue by Henrietta Elizabeth, only sister of the late Sir Matthew White Ridley, Bart., and afterwards married to James William Farrer, Esq., a Master in Chancery, one son, John, now Earl of Eldon.

2. Lady Elizabeth, married in 1817 to George Stanley Repton, Esq., architect, youngest son of Humphrey Repton, Esq., the celebrated landscape gardener, by whom she has two sons.

3. The Hon. William Henry John Scott, barrister at law, and successively M. P. for Heytesbury, Hastings, and Newport, Hants, who died in 1832, in his 38th year: and

4. Lady Frances Jane, married in 1820 to the Rev. Ed-

* Letters by Lord Mahon, vol. i.

ward Bankes, B. C. L., Prebendary of Gloucester and Bristol, and Rector of Corfe Castle in Dorsetshire. This lady survived her father only a few months. The present Earl of Eldon married in 1831 the Hon. Louisa Duncombe, youngest daughter of Lord Feversham, by whom he has issue several daughters, and a son heir to the earldom.

Unlike great lawyers in general, who have either written remarkably short wills, disposing of large possessions in a single half sheet of letter paper, or have involved their meaning in so much mystery as to contradict themselves, and suffer their intended dispositions to be made void for uncertainty, Lord Eldon dictated his will at considerable length, but at the same time with perfect clearness and precision. When proved in the Prerogative Court at Canterbury by the three executors, the present Earl, Mr. Cross, the Master in Chancery, and Mr. Alfred Bell, the personalty was sworn to be under 700,000*l.*, but in addition to his personal wealth, many of the accumulations from his profession had been invested in the purchase of real estates. He bought a large landed property in Durham, and purchased Encombe from Mr. Morton Pitt, many years M. P. for Dorsetshire, attracted by its distance from London, a secluded, quiet, and beautiful situation. The original purchase was a very advantageous one, and he subsequently increased his estates in that county to about 3,000*l.* a year. Hazardous as the remark may at first appear, we are persuaded that he was never in his life subject to real pecuniary distress. Even in the first years after what the worldly-wise deemed his improvident marriage, the fugitives received supplies in a triple, though scanty stream, from his father, father-in-law, and brother, to the amount of 300*l.* a year, sufficient with their habits of prudence and seclusion to ensure independence. His professional income had carried him beyond these shallows before a rising family compelled a larger expenditure. The proneness to romance respecting the early difficulties of distinguished personages, often fostered by themselves in a spirit of subtle self-flattery, and the old Earl's propensity to expatiate on his early privations, may account for the generally received, but certainly erroneous, opinion. He

continued to the last to be fond of insinuating that this expense or that was above his means, still harping on the "*res angusta domi*," when not only the peer in St. James's Street, but the Lombard Street banker, would have gladly exchanged cash books with him. To descant on straitened circumstances was a token of those infirmities to which the wisest must submit. There was a secret pride in the acknowledgment akin to that with which the millionaire sports the most thread-bare coat and worst hat on the exchange — with which the large landed proprietor complains of falling rents, and not having a shilling to produce on any sudden exigency. The Scotch have an expressive word *maundering*, which happily describes the spirit of a declaration made by the old earl to a friend at Rushyford a few years before his death, that nothing had ever repaid him for the loss of the society of the bar, and that if he had never left the bar he should have been both a richer and a happier man. Of the extent of his annual income during the busiest periods of his professional life, we are provided with sufficiently accurate data by himself. In one of the many discussions to which party malice on the subject of his presumed affluence gave rise, he declared that "the office of Chief Justice of the Common Pleas did not produce one-third of the income he had received while at the bar. The Chancellorship did not realize one farthing more at the present day than a century ago. In no one year since he had held the seals had he received the same amount of profits which he enjoyed at the bar." As the income of the presiding judge in the Common Pleas was at that period 6000*l.* a-year, and as the yearly revenues of the Chancellor, though derived from various sources and fluctuating in amount, have been reckoned by a committee of the House of Commons to average 17,000*l.* per annum, subject, however, since 1813, to a deduction of 2500*l.* a-year, payable to the Vice-Chancellor from the fees of the Great Seal, we could scarcely be accused of exaggeration, supposing his own calculation accurate, in estimating the emoluments of Sir John Scott, during his six years' tenure of office as Attorney-General, at 18,000*l.* a-year. In some years the Chancellorship produced even a larger sum. In 1810-11 its revenues

netted, according to the report of the Commons, 22,730*l.*; in 1809-10, 19,200*l.* But in truth his recollection was most imperfect on the subject, and the Chancellor as much exaggerated his own profits at the bar, as he underrated them when on the bench.

From his own Fee Book it appears that Sir John Scott's fees were

	£	s.	d.
In 1788 . .	8,419	14	0
1789 . .	9,559	10	0
1790 . .	9,684	15	0
1791 . .	10,213	13	0
1792 . .	9,080	9	0
The most productive year, 1796 . .	12,140	15	0
And in the last entire year, 1798 . .	10,557	17	0

In his most lucrative year Lord Eldon must have accordingly realized at least 3000*l.* a-year less than when seated on the Woolsack, after deducting his annual allowance to the Vice-Chancellor.

The disposition of these princely funds occupied seventy-four sheets, closely written. There were also seven codicils, none of them (except one, an holograph,) very short. The will was dated the 24th June, 1836, the codicils bore date in 1837, the last written December 21st, 1837,—less than a month before the earl died. The bulk of the will consisted of very careful devises of the real property in the counties of Dorset and Durham, trusts, limitations, recoveries, &c. The principal devisee was Lord Encombe (the present earl) for life, then his first and every other son successively in tail male; in default of heirs male the property was left under various conditions and limitations to the daughters of the late earl, Lady Frances Jane Bankes, and Lady Elizabeth Repton, and their families. The children of the latter took a less extensive interest than that of the former, the reason of which distinction the testator declared to be, that Lady Frances Bankes had a large, and might expect to have a larger family; whereas Lady Elizabeth Repton had but one son, and was not likely to have more. The trustees

of the property were Master Cross and Mr. Alfred Bell. Lord Eldon left to his elder daughter, Lady Elizabeth Repton, a life interest in 4000*l.* a-year; to Lady Frances Bankes 4000*l.* a-year; to his grandsons, the children of Mr. Bankes and Mr. Repton, 10,000*l.* each, and 5000*l.* each to the granddaughters. To his butler he gave 100*l.* a-year for life, 50*l.* each to all the servants that had lived with him a certain number of years, and 20*l.* to every other domestic in his service. There were various small legacies, and, amongst others, the late earl's coach-horses were bequeathed to Lady Frances Bankes, with the direction that they should have a free run of the grass at Encombe. The earl also bequeathed his favourite dog Pincher to the same lady, with a clear annual allowance of 8*l.* to buy him food. At the end of the will was a schedule of various articles, such as portraits, watches, his chancellor's robes, peers' robes, presents made to the earl from public bodies, and the like, bequeathed to different individuals. The codicils contained some trifling alterations and modifications of the devises in the will, and a few lines in his own hand, dated in the September before his death, which gave a legacy to James Smith, the earl's servant, whose character and services it eulogized. This instrument was written on a sheet of note paper in a tremulous hand, the signature to the last codicil bearing no resemblance to that in the will, and appearing like the uncertain writing of a blind person, or one whose hand was guided. All the instruments were sealed with the earl's coat of arms with black wax.

Some heartless raillery by hostile politicians, and a few wailings by false economists, have been attempted on the bequest of 8*l.* for the keep of a dog, which even when unexplained bears token of a kind disposition, but the motive for which had its origin in the best feelings of our nature. This animal, a dark-coloured German spaniel, had been his constant companion for some years, had travelled with him in his carriage, been always in the room with him, and generally fed by himself. The dog had gained his affection by having belonged to his son, William Henry Scott, and having shown such fondness for his first master that he could with difficulty

be removed from the room where he died. The old man's heart was warm with those charities which are best kindled at the domestic hearth, and the brute beast might well be dear to him for loving those that were gone. But the sphere of his liberality was not confined within the curtilege of his own dwelling; it comprehended his profession, neighbours, and tenantry. During the latter years of his life, when released from the cares of office, he was in the habit of making several journies into the county of Durham to inspect the state of his property there, and of fixing his head-quarters at the large solitary inn at Rushyford. Before leaving the county he always gave a dinner to his tenants, and took that opportunity to make a short speech full of kindness and good feeling. But to the farmers the advantages of his visits were not confined to words. Whenever he ascertained that the terms of their leases were not considerably in their favour, or whenever the seasons had been unfavourable to their crops, he was in the habit of allowing most ample deductions from the rent.

He was extremely liberal to the poor at Encombe, and contributed large sums to the charities in the neighbourhood. That his disposition was charitable and humane there can be no doubt. Mr. Pensam, his excellent private secretary, declared that his private charities were very extensive. He was himself the agent in the distribution of a great many of them, and there were few benevolent objects to which he did not privately contribute. Numerous instances of his humane interference on behalf of prisoners confined in the Fleet, under orders of the Court of Chancery, for what is called contempt of court, in not putting in answers or examinations, but whose real crime was poverty or ignorance, might be brought forward. His name indeed seldom appeared emblazoned in those public subscriptions, a contribution to which seems to be looked upon as a necessary tax upon wealth and station; but, when he distributed alms, his left hand knew not what the right hand gave. Those objects on whom he principally delighted to bestow assistance, were gentlemen in reduced circumstances, or men of education who had seen better days: in such cases, the parties relieved were often

kept in ignorance of the source from which their succour flowed. It seems strange that in a profession so uncertain as the bar, there should be no fund for the relief of decayed lawyers. Many such there are, like waifs on a barren shore; men who have donned the stuff gown till ashamed of its worn look, — who "cannot dig, and to beg are ashamed." These were the persons whom Lord Eldon most loved to gladden by his bounty. The loan of 500*l.* towards the library of one, — a delicate mode of veiling his donation; the gift in a blank cover to another; the conferring a small place on a third*, were among the luxuries of charity in which he delighted. On one occasion a learned person being under embarrassment from the imprudence of his wife, his friends proposed to raise a fund to extricate him. Lord Eldon directed the managers of the subscription to do the best they could, and to return to him when they had done so. The amount of contributions fell considerably (it has been said, two or three thousand pounds) short of the sum required; he instantly supplied the difference. This unobtrusive generosity was exercised at another time to make a man in humble life happy. When Chancellor, he had engaged a hackney-coach to convey him from Lincoln's Inn to his residence in Hamilton Place, and having a pressing appointment, he left some papers of importance behind him. The honest coachman hastened back with the treasure, and Lord Eldon, finding on inquiry that the general conduct of the man deserved encouragement, presented him with a coach and a pair of horses to start in business for himself. Many other instances might be given of his unostentatious goodness to those in humble life. The representation of his adopted county being contested with much heat, and ending in the return of the Conservative candidate, Lord Eldon gave a most munificent donation, the whole of his subscription in behalf of the cause amounting to

* It was said of Lord Hardwicke, that amidst all his acquaintance he chose the most barren and sapless plants, on which to shower down his refreshing rain. Similar dissatisfaction has been before expressed at the patronage of Lord Eldon. For the selection of some his kindly feeling must be answerable, and for many the baneful influence of the court. Lord Eldon was accustomed to complain of the constant solicitations of the late Queen Charlotte, which scarcely allowed him an opportunity to oblige his own friends.

several thousand pounds. That he should have wholly omitted his native town from the sphere of his bounty, and never added his name to its many local charities, has naturally occasioned much surprise. The omission could scarcely have arisen from negligence, and to some private chagrin may perhaps be owing the cause of estrangement from the place of his birth.* Yet the following letter, written by Lord Eldon to the Mayor of Newcastle, on his being requested to sit for his picture, in order that it might be placed in the Guildhall of Newcastle, would argue no lurking sentiment of displeasure: —

"Dear Sir,

"I beg you to be assured, and that you will be pleased to assure the aldermen and common council, that I am impressed with a very warm sense of gratitude for the mark of respect and regard which is mentioned in your letter of the 13th instant. In complying with the request contained in it, which I am satisfied is dictated more by their kind partiality than by any claim which I can have to the distinction offered to me, I would willingly indulge the hope that the measure which has been proposed may occasionally and usefully suggest to the descendants of our fellow-burgesses that, in this great and free country, the industrious exercise of moderate talents may, under the blessing of Providence, raise them before the close of life to those situations in the state to which, in the beginning of life, they could hardly aspire; and may ensure to them also the solid gratification which flows from receiving in advanced years distinction and honour from that part of the community among whom were passed the days of infancy and youth.

"I am, dear Sir,

"Your obliged and faithful friend,

"July 26. 1811. ELDON."

This graceful letter will bear comparison — no slight test of merit — with the answer of Sir William Scott, to whom a similar mark of honour was destined: —

"Look here upon this picture and on this:
The counterfeit presentment of two brothers."

* Yet he once came home in high glee, to report that he had heard a nursery-maid, near the Strand, singing to a child a song beginning, "The Mayor of Newcastle is next to the King."

"My Dear Sir,

"I beg you will take an early opportunity of presenting my sincere thanks to the corporate body, over which you at present preside, for the high and unexpected honour they have been pleased to confer upon me in requesting me to sit for my picture, to be placed in the Guildhall, in company with the pictures of the Lord Chancellor and Lord Collingwood.

"It cannot but be highly gratifying to me, on every account, to be thought worthy of such a distinction by the gentlemen of Newcastle. I received my education amongst them; and to that education, under God's good providence, I owe every thing that can have obtained for me so flattering a declaration of their regard. I am happy in feeling that, in their opinion, I have not dishonoured it in the course of a life that has passed under some degree of public observation. It is a testimony to my character to which, I hope, my family will, in all future time, advert with peculiar pride and satisfaction, as conveying the sentiments of those who have had the best opportunities of judging upon the general tenor of my conduct. It is with real elevation of mind that I receive the result of their favourable judgment, in their associating me upon such an occasion with two individuals who have made a more splendid use of the same early advantages in life, and whose more important public services have merited for them the applause of their country, with the honourable approbation of their native town.

"I have the honour to be, Mr. Mayor,

"With particular regard and respect,

"Your obliged and faithful humble Servant,

"Early Court, July 27. 1811. WILLIAM SCOTT."

"To the Right Worshipful the Mayor of Newcastle."

Though such a determined supporter of the Church established by law, and sincere believer in its doctrines, Lord Eldon was for a great portion of his official life a most irregular attendant on its public services; and exposed himself to the clever sarcasm, that he might be a buttress of the Church, but could not be considered as a pillar of it, as he was never found inside. (Romilly, who attended the parish church at which the Chancellor ought to have been, used to comment with no slight severity on never seeing him there). The neglect admits of no excuse; and the reason, stress of occupation, was an insufficient apology: but his political habits

had been formed at a time when public men were much less observant than they have since happily become, of the devotion due to the sacred day of rest. The Speaker used to hold his Sunday levee, and the ministers their Sunday cabinet council, and even prelates (witness the memorable rebuke of the pious George III. to the then archbishop of Canterbury) were not ashamed to issue their cards of invitation for a musical party on Sunday evening. But the ex-chancellor corrected this appearance (it was only the appearance) of irreligion in later life, and became a constant attendant at the church which stands on part of his estate, at a considerable distance from the house. The church of Kingston is a chapel of ease to Corfe, in which parish Encombe is situate. He entirely rebuilt it, at an expense of 2,500*l.*, and constructed a spacious vault for his family.

So far as his domestic habits were concerned Lord Eldon might have sat for the portrait drawn by John De Witt of a great statesman, that he was not blemished with many court vices, not delighting in music, dancing, hunting, gluttony, or drinking. The Chancellor once declared in the presence of, and to the horror of, his Vice, that he would not give two straws to hear the finest singers in Europe; and his eye for the fine arts was as dull as his ear for song. He had never travelled, and cared as little for continental refinements as he knew of their languages. Sir John Leach, on the other hand, was vain of his accomplishments, acquired in foreign travel, rejoiced in a subscription to Almacks, and boasted of an excellent cuisine, and a French cook. One day, when he expected the Chancellor as a guest, he sent to enquire if there was any particular dish which his lordship might desire to have provided. Lord Eldon, either to indulge a sly joke at the expense of his gastronomic friend, or in the genuine simplicity of his taste, replied liver and bacon. Sir John explained on his arrival that his *artiste* had done all in his power, as much as was *possible*, to comply with the Chancellor's humour. He laughed heartily at being accommodated with his favourite, but not recherché, viands. His host must have realized Goldsmith's description in the MS. of Retalia-

tion, during the course in which this homely dish made its appearance: —

> "So there he sat stuck, like a horse in a pound,
> While the bacon and liver went merrily round."

Though never pushing hilarity to excess, Lord Eldon, like his brother Lord Stowell, loved to crack a bottle, at least, of old port. When the Chancellor, Admiralty Judge, and Master of the Rolls, Sir William Grant, met together, there were few good Tories and loyal subjects who could, according to the royal pun, *comport* themselves better, if so well. During the earlier part of his official life the Chancellor was accustomed to share their bachelor fare with his two secretaries Burrell and Surtees, who kept house together in chambers in the Temple. On these occasions a bottle and a half a man used to be the general allowance; their chief, exhausted probably by the fatigues of the day, taking his full share. When young, few were more joyous in society than Mr. Scott. He could tell a story, pass a jest, and turn a compliment or piece of raillery with great dexterity and tact. He was a favourite guest at Pitt's select suppers, to which only a chosen few from the House of Commons were invited at the close of the debate. Lord Eldon used to revert with much pleasure to these symposia; and described their host to have been in the habit of taking off the speeches and manner of the different members who had spoken in the course of the evening, and with perfect impartiality. Admitted when a very young member of Parliament to these revels, it was with lively regret that he found himself compelled to tell Pitt, that a leading chancery counsel could not afford to give up his midnight hours to them. To the strict abstinence which (like the other great lawyers of his day) he afterwards observed from all general and literary society, may be ascribed the otherwise singular circumstance, that the name of John Scott should never occur in the pages of the gossiping Boswell. He had once, however, so runs the story, a singular interview with Dr. Johnson. He was living in Lamb's Conduit Street, near the Foundling Hospital, in one of those houses which have (or had) small gardens behind them, and then approached to the dignity of suburbs. Mr. Scott was occupying a vacant

hour in his little garden, and was caught by his brother and Dr. Johnson in the act of clearing the walks of some snails, and throwing them over the wall. On discovering his employment, the sturdy moralist interfered with some severity: "What you are doing young man is scarcely honest. What right have you to injure your neighbour's property?" Dr. Scott came to the rescue of his discomfited brother: "What you say is very true, Dr. Johnson; but his neighbour is a sad dog, the vilest Whig in the street." "Is he so?" briskly rejoined the mentor; "then I will fling snails too!" and forthwith sought one snail more with which to invade the obnoxious territory.

His disinclination to society increased upon Lord Eldon with habit and advance of years. The distaste was encouraged by Lady Eldon, who shunned all interchange of visits, and lived for her husband and children alone. She continued to the last to attend herself to most of his personal comforts. She cut his hair, arranged his linen and clothes for dress; and stole to the window when he went out, to see, so neat in all his arrangements, the Chancellor pass by. His indulgence to every wish she might form was unbounded, and could hardly fail to encourage some peculiarities. In compliance with her humour, he gave few parties, and exercised but trifling civilities; nor, it must be confessed, was his house kept up in the style that a Lord Chancellor's ought to be.

Unlike his predecessor Lord Loughborough, who preserved the trappings of state, and studied an appearance of splendour befitting his high office, the Chancellor neglected too much the pomp and circumstance which the forms of society demanded from the head of a generous profession. He discontinued the levees in which his predecessor shone pre-eminent; and the interruption given to those opportunities of social intercourse, which it was supposed to be the duty of his station to afford, caused a reasonable complaint that it was injurious to the profession of the law, and particularly to those in the front ranks. It is certainly true that the judge will best consult the reverence which is due to his character by pursuing a private and reserved course of life; but there were occasions,

which the Chancellor neglected, when he might have gracefully dispensed hospitalities, at the infrequency of which the excluded barristers sneered, and revenged themselves by epigrams on the mace travelling down in state to Westminster in its own hackney coach; on the breakfasts at Lincoln's Inn Hall, instead of his own residence, through the convenient illness of Lady Eldon; on the rarity of his entertainments, and limited number of his guests, formed too closely on the courtier's maxim, sometimes less than the graces, and never more than the muses. These habits of seclusion and economy Lord Eldon began to relax after his retirement. He was naturally of a social and festive disposition; and in late days, especially after Lady Eldon's decease, acted the part of a good Amphitryon. At the foot of his own table he delighted in alluding to the period when the leg of mutton, which graced his Sunday board, had to do service in various shapes and dressings through the following week days, till entirely consumed. One of such frequent reminiscences it was that provoked some guest to whisper to his neighbour, he wished their host would talk less about his bad dinners when he could not afford them, and give better when he could. The careful housewife should have borne the greatest part of this censure; for she had studied lessons of thrift so diligently in their early establishment that they could never be unlearned nor forgotten. In visiting Dorsetshire, whilst he held the great seal, his notice of the neighbouring gentry was confined principally to paying and receiving morning calls. When a widower, though unable to visit himself from the state of his health, he had frequent dinner parties, and friends residing in the house with him. To such parties his conversation was full of professional anecdote and amusing reminiscence. He loved to dwell on the incidents of his prosperous career, from the time when he used, with other barristers, to travel the northern circuit on horseback with saddle bags, after the approved fashion of gentlemen of the road; to the more triumphant era when Mr. Hastings, having brought in a private estate bill, which had reference both to English and Scotch estates, and the House of Lords being unable to agree which judge should be consulted, referred the question to Sir John

Scott, as equally conversant with the law of both countries. He would freely speak of his own imputed slowness and indecision, rejoicing in the old figure, that the pulse of chancery could not beat as quickly as that of suiters—that his predecessors had been equally blamed, and that he thus avoided doing individual wrong. No case had come before him as bad as one that had occurred to Lord Apsley, the first time he took his seat in the court. An old lady, a peeress, came into court to give her consent in person that a certain sum should be paid on a life insurance, to one who was to take some property on her death. Lord Apsley told her he would not detain her; but she begged the noble lord that he would detain her a little longer, as it was only eighty-two years since her cause had been in court, and she wished to see how they proceeded in settling it. The noble lord left it to his hearers to guess which was dispatched first, the lady or her cause.

His tardy justice sometimes met with due but unexpected acknowledgment. An intelligent defendant, against whom he had decreed, once called upon him after the judgment and said, "My lord, you have decided against me: the decision was unexpected and contrary to the encouragement given to me by all my counsel; but I cannot return to my home without saying that, painful as it is to me, I am satisfied you are right, and am grateful for the pains you have taken."

The beautiful description which Schiller gives of a winding road, as rendered by Coleridge, may be applied to Lord Eldon's judicial career:—

> "My son, the road the human being travels,
> That on which blessing comes and goes, doth follow
> The river's course, the valley's playful windings,
> Curves round the corn-field, and the hill of vines,
> Honouring the holy bounds of property."

In those cases which affected not merely the fortunes but the character of men, Lord Eldon had often reason to congratulate himself on not pronouncing a precipitate judgment. His cautious rule with regard to magistrates, worthy of imitation by every future holder of the great seal, not unfrequently prevented cruel injustice. He always acted on the principle that a magistrate ought not to be removed on the ground of

rumours of misconduct, or unproved accusations, but that judicial proof of his delinquency, the sentence of a court, was the proper and only safe evidence on which the Chancellor could in general cases take the grave measure of removing him from the commission. Even after a verdict of guilty and sentence pronounced, he paused to ascertain whether the individual had any complaint to make of mistrial, or ground for bringing his writ of error. A justice of the peace had been convicted on the clearest evidence of a flagrant fraud; the case was instantly forwarded to the Chancellor with an urgent request for his prompt interference to vindicate the honour of the bench. He read the proceedings at the trial and refused. Meantime the witnesses for the prosecution were indicted for perjury, and proved to have conspired to ruin the accused. The merciful Chancellor exulted in the proof that by his forbearance he had escaped inflicting an undeserved indignity on an innocent party. This habit of exercising a zealous and humane scrutiny in every case had been strengthened by an instance of grievous wrong, which came to Lord Eldon's knowledge early in his professional life, in which the convicted party had been sacrificed to prejudice, and he himself became one of the happy instruments of redressing injustice. The facts were thus shortly and clearly explained to the author by the late Baron Gurney.

Mr. Christopher Atkinson was an eminent corn merchant and factor. In the course of the American war he was employed by the Victualling Office to purchase corn and flour for the navy, as a factor, on commission. He was attacked in the newspapers, and it was imputed to him that he had defrauded the Victualling Office by charging higher prices than he paid. He moved for a criminal information against one person, who made this charge, and in his affidavit to obtain the information he made oath that he had not in any instance charged more than his commission: some information was given to the Treasury, upon which a prosecution for perjury was commenced and conducted by the law officers of the crown. The indictment assigned perjury on six instances, in which it was alleged that he had charged higher prices than he had paid. The defence was, that, although in

the particular instances specified, he had charged more than he had paid, those prices were merely nominal, for the purpose of obtaining money by way of imprest, and that every six weeks the whole was set right by a balance bill. This defence was not well received by Lord Mansfield, and not sufficiently made out to the satisfaction of the jury, and Mr. Atkinson was convicted. In the next term he did not appear to receive judgment, but went to France. In the course of the next year an error having been discovered in the record, which his counsel thought fatal, he came over, surrendered, and moved in arrest of judgment. On the other hand, the Attorney General moved to amend—the court did amend. An unsuccessful application was then made for a new trial, and in Michaelmas Term, 1784, Mr. Atkinson received judgment of fine and imprisonment and the pillory. About the time the prosecution was commenced, the Attorney General had filed a bill in the Exchequer for an account, but the suit had slept. Mr. Atkinson now received the suit, and called for the account; the account was taken in the Court of Exchequer, and occupied considerable time; in the end it was clearly proved that Mr. Atkinson's allegation of the balance bill was true, and that, upon the whole, he had not charged more than he had paid—in very many instances much less.

I was present at the argument in the Court of Exchequer, and well remember the feeling manner in which Lord Eldon, then Mr. Scott, who was leading counsel for Mr. Atkinson, commenced his address to the court for his client, who had been "whipped of justice," though now it was proved that he was free from crime.

Chief Baron Eyre delivered an elaborate judgment in favour of Mr. Atkinson, and, his innocence being at length too tardily established, he received a pardon under the great seal, and for many years afterwards sat in parliament.*

In his doubts and delays the Chancellor would smilingly urge he had many aiders and abettors. To show how anxious the solicitors were to prevent any short way to judgment, he mentioned that on one occasion having desired to be furnished

* From the relation of Baron Gurney.

with an abstract of the proceedings to enable him the more quickly to deliver his decision, the abstract came in the form of a cart load of papers, which actually covered the floor of his chambers, and would have consumed some weeks to peruse cursorily!

Some of the political and sporting adventures with which he used to amuse his guests as an old man were not without interest. In the early years of his chancellorship during one of the London riots, his house in Bedford Square, the venerable No. 5., was surrounded by a mob; several of the most daring rioters broke in, and one penetrated as far as the room in which he was sitting; Lord Eldon collared him on his entry, and said, "If you don't mind what you are about, my man, you'll be hanged." The visitor replied, "Perhaps so, old chap, but I think it looks now as if you'll be hanged first"—and, added the old peer, with somewhat more archness than usual in his sweet and intelligent smile, "and I had my misgivings that he was in the right." On another occasion, when the House of Lords was surrounded by a multitude incensed to fury against the corn laws, and the Lord Chancellor was amongst others marked out for insult, the people on finding, when his carriage drove up to take him away, that his wife, who had been in the habit of coming to meet him, was in it, and had not been deterred through fear of their violence, at once changed their intention, and giving a cheer to the lady, allowed both of them to depart in peace.

So obnoxious were his politics in times of political confusion, that his person could not be deemed safe even in the country. He was at Encombe on occasion of some later agricultural riots, and had notice from a person in authority at Poole that there was an intention among the rabble to pass over into Purbeck and attack his residence. Active measures of defence were taken at this short notice, and many bullets were cast that night in the house. It proved a false alarm, but sufficed to put the earl on his mettle, for though not without some constitutional timidity, he could overcome it on great and arduous exigencies by the master of his strong intellect, and was more intellectually than physically timid. But the gusts of popular resentment were far between and

transient, he generally sailed with the stream of national favour, and became an idol of the bulk of the people on his retirement from office. His opposition to the grant of Roman Catholic Emancipation raised his popularity to the zenith with the great body of the English gentry and yeomanry who, in the beautiful language of Southey, "walk in the ways of their fathers, and hold fast to that church for which Laud and his king suffered on the scaffold, and the noble army of our earlier martyrs at the stake." They hold to it with a sober and sedate, but sincere and strong attachment. Their feelings of gratitude and affection were conveyed to their faithful champion in every variety of form, overflowing in addresses of approbation from almost every quarter; several of them accompanied with costly presents. But the testimonials, of which the old peer spoke in the highest glee, were of a simple nature — the cheese from the dairy of "some gude wife" in Cheshire, or the snuff-box from the hand of some poor mechanic who hailed him as the defender of the church he revered but deemed in danger. These private tributes of esteem and respect to the ex-Chancellor yielded him the livelier pleasure from the circumstance of an accidental disappointment the winter after he resigned the seals. He had for many years had his larder at Christmas crowded with game and turkeys, Yorkshire pies and all the orthodox presents of the season which were poured into it by his numerous political and other friends, who seemed gladly to have embraced that period of the year to remind him of their gratitude or good-will; but in the Christmas 1827-28, the first after his resignation of the great seal, he was afraid he should be painfully reminded that these attentions had been paid rather to the person who had patronage to bestow, than to the individual, for nothing arrived, and it was the poulterer who supplied the turkey for the Christmas-day dinner of the ex-Chancellor. One solitary hamper he afterwards discovered had still been directed to him, but, as if by a sort of conspiracy of fate, the coach which conveyed it had been robbed. This was however the single unlucky year; future tributes came in sufficient abundance to prove how much more was paid to the man than to the minister.

His love of sportsmanship, in which he took a national pride (for it was his conviction that every Englishman had implanted in him a fondness for game), led the sedentary judge to take active exercise in autumn after the nine months' sittings in his court. The change of air and exercise must have greatly contributed to make his age 'frosty but kindly.' From the period of poaching as an University lad over the grounds of Lord Abingdon, to the time when he required the aid of a trotting pony to visit his preserves, Lord Eldon never had the gun out of his hand when he had leisure to carry it. He pursued his game with all the keenness of a determined sportsman, and with a settled purpose of slaughter, which not all his repeated failures could subdue, for he was an execrable shot. Whilst the newspapers, those universal but not always veracious chronicles, spoke of his death-doings every autumn as if he had been the crack shot of the peerage, the friends who accompanied him were more occupied in listening to his anecdotes, than in witnessing his success. A connection in London was anxious to have a pheasant of his lordship's shooting, and Lord Eldon sought to gratify his wish at the expense of much good powder and shot. A pheasant was at length seen sitting in a tree—the promise had been long given—the chance might not occur again—the Chancellor drew his trigger, but the bird escaped!

He loved the sport for its own sake, and was never tired of recounting his adventures. One of them, when dressed in his shooting jacket and gaiters, his favourite costume in the country, he thus related to Mr. Farrer:—"One day as I was with my dog and gun on my grounds, dressed as you now see me, I heard two reports in an adjoining field, and saw what appeared to be, as in fact they afterwards proved, two gentlemen. I accosted them with—'Gentlemen, I apprehend you have not Lord Eldon's permission to shoot on his grounds?'—to which one of them replied, 'Oh, permission is not necessary in our case.' 'May I venture to ask why, gentlemen?' I said—'Because we flushed our birds on other ground, and the *law* entitles us to follow our game anywhere; if you ask your master, Lord Eldon, he'll tell you that is the *law*.'—Whereupon, I said, 'I don't think it will be necessary

to trouble him on that account, since, to tell you the truth, I am Lord Eldon myself!' They instantly sought to apologise; but I added — 'come, gentlemen, our meeting has begun in good humour, and so let it end — pursue your day's pleasure on my grounds — only next time don't be quite so positive in your *law*.'"

Notwithstanding this good-natured permission of a day's shooting, Lord Eldon had the repute in his neighbourhood of being a most determined preserver of his game, and of regarding poachers with the horror becoming a country gentleman. He one day required a half-pay captain to show his certificate: "Who are you?" said the trespasser, "I suppose one of Old Bags' keepers." "No," replied the Chancellor, good-humouredly, "I am Old Bags himself." When political enemies inveighed *à la* Bentham against the learned slaughterer of pheasants, whose prompt deaths were objects of envy to suitors, they should have pointed the satire rather at their lucky escapes, for, unlike the subject of a decree, they were rarely winged. But however unskilful, Lord Eldon continued, till physically unable to pursue it, passionately fond of the sport, and would, like Sir Robert Walpole, at any time rather open the wafered letter from his gamekeeper than letters on affairs of state. Which he opened first we have not his own confession for recording.

To his simple tastes, regular habits, and unruffled temper, Lord Eldon was chiefly indebted for preserving to extreme age a hale and vigorous constitution. He had suffered from illness when a young man, and had consulted Dr. Heberden, who recommended a trip to Bath, that he might induce a fit of the gout by drinking the waters. The Doctor assured him that if he did not bring out the morbid humour he would never be better. Mr. Scott went in the month of September, the time prescribed, drank the waters, and had a smart fit, which completely removed his ailments. This was succeeded by attacks through life, at intervals of six years very near in their recurrence, so that he used to say he could never plead the statute of limitations against them. He always spoke in warm terms of gratitude of Dr. Heberden, who would never accept even the smallest fee from the struggling lawyer for

this effective cure. Though not a valetudinarian, the Chancellor took strict care of his health, and was exposed to the raillery of the wags of Windsor for his forethought at the funeral of the Duke of York. Aware that standing so long on the cold flags of the chapel at night would be most prejudicial to one of his gouty tendency (the effect proved fatally injurious to some of the mourners), he stood upon his hat. By this care and caution he was enabled at the age of seventy-five—the grey cold twilight had not then arrived—to apply to himself the Latin epigram so happily descriptive of the close of a well-spent life:

> "Vita senis, libri, domùs, hortus, lectus amicus
> Vina, Nepos, ignis, mens hilaris, pietas."

During the fifty years which intervened between his ascending the rostrum in the theatre at Oxford and giving up the seals, but one check occurred in his long and prosperous career—only one disappointment to impede his progress, as it were, along the via sacra, a constant procession of triumphs, and that one, strange to say, emanated from his alma mater. He lost by accident and over-security an appointment he had long coveted, the Chancellorship of the University. In 1801 he was nominated by the Duke of Portland High Steward, the second dignity in Oxford; and in 1809, on the death of the duke, looked forward with natural ambition to the first place of honour. Holding the highest office to which a lay subject can aspire, the keeper of the great seal felt that he had a strong claim to represent that University in the Lords, of which his brother had been for many years the admirable representative in the lower House.

A formidable competitor appeared in the person of the Duke of Beaufort, and another with still higher pretensions in Lord Grenville, who brought with him the powerful support of Christ Church. Lord Eldon was unfortunately "a small college man." University could muster but few votes comparatively in convocation. In addition to the undivided opposition of the large and aristocratic foundation of Christ Church, the principal of Brazen Nose, the second college in extent of influence, was indefatigable in his exertions for Lord Grenville. During

the whole term previous to the contest, Dr. Hodgson declared that he never quitted the precincts of his college, so fully occupied was he in canvassing absent voters, and preparing the literary ammunition usual on such occasions. The struggle took place at a critical juncture of public affairs, and, through the hazy political horizon, trimmers and waiters upon Providence thought they saw in the distance Lord Grey premier, and a new Lord Chancellor. The Whigs exerted themselves with a zeal that almost deserved success, and made every vote for the hero of Christ Church a personal favour. Their houses, horses, carriages, were unreservedly at the service of his supporters. A hard-working committee, under the able guidance of Mr. Charles Wynn, secured all the relays of post horses on the Oxford roads, while no plans had been concerted by Lord Eldon's friends in time, and some of his voters were stopped in the midst of their journey for want of the means of conveyance. The Chancellor himself used to impute his disappointment to the not uncharacteristic neglect of delaying an immediate answer to an important letter; but however vexatious the effect of such tardiness may have been, we should impute the result to a continued system of negligence rather than to a solitary example. Even as it was, the chaplet was torn from his wreath with extreme difficulty; a majority of sixteen decided the election. The number, after a poll that lasted through one entire day and night and part of the next day (no adjournment being allowed), were for Lord Grenville, 406; Lord Eldon, 390; the Duke of Beaufort, 238. Such a numerous body of voters never polled before; the members of convocation on the books were 1274, the number that voted, 1084. The most memorable contest in the annals of academical elections would not have been thus concluded had not an influential college (Queen's) been induced at a late hour to throw away its votes on the candidate whose canvass afforded no rational hope of success. Lord Eldon felt the disappointment the more keenly as he had anticipated a different result, and to a shade of displeasure may perhaps be attributed his selection of New College, a college which had supported him, for the education of his grandson, Lord Encombe, in preference to the hostile

Christ Church. Had the vacancy occasioned by Lord Grenville's death occurred a few years sooner, the University would have hailed the venerable peer as their chancellor with joyful and universal acclamation. But the opportunity came too late; at eighty-three years of age he could only say to admiring academics "*moriturus vos saluto*," and saw with pleasure the great captain of the age, the champion of Conservatism, elected without opposition.

"Peace has her victories
Not less renown'd than war."

To bear his part in one of the most remarkable that 'these piping times' have furnished, Lord Eldon revisited Oxford in June, 1834, and witnessed the brilliant pageant of the installation. It was in the theatre, from whose rostrum he had recited his prize essay sixty-three years before, that the affecting scene was presented which must have been recalled to the vivid remembrance of many spectators by a picture in the exhibition of the Royal Academy. At the ceremony of conferring on Lord Encombe an honorary degree of D. C. L., the applause was deafening. Every eye turned upon the Earl of Eldon, while his was fixed upon his grandson. When the newly-made doctor ascended the steps of the Chancellor's chair, the Duke of Wellington clasped his hand with an evident friendship that again drew forth cheers, which were redoubled as Lord Encombe, instead of proceeding at once to his place among the doctors, paused as he passed the High Steward, and, taking his hand, bowed down upon it in token of deference and affection for him to whom, there could be no doubt, these acclamations of the theatre were chiefly intended. After looking at his grandson for some moments, listening to the pealing thunders of popular applause, his eyes wet with tears of joy and tender pride, the aged earl sank his head upon the ledge of the seat before him, and, completely overcome, covered his face with his hands from the view of the spectators. That hour must have been a full and more than sufficient atonement for any past mortification. In the language of the old dramatist —

"Sire to his father, every tear he shed
Was three score ten years old."

The manner of testifying her gratitude to one, who had most zealously advocated her tenets, and most faithfully advanced her interests, was alike gratifying to him, and honourable to the University. To associate his name by a permanent memorial with that University had already been accomplished. In May, 1829, several noblemen and gentlemen, admiring the character of Lord Eldon, had assembled at Lord Arden's house in St. James's Place, and agreed that the following proposal should be submitted to the public: —

"Those whose names are hereto subscribed are desirous of manifesting, by a suitable and lasting testimony, the deep and grateful sense they entertain of the eminent services of John, Lord Eldon, throughout a long and laborious public life, during which his exertions have been ably and uniformly directed to the preservation and maintenance of the established constitution of this country."

At a general meeting held at the Thatched House, the Duke of Richmond in the chair, it was resolved, — "That it appears to this meeting, that a testimonial at once creditable to the subscribers and honourable to the Earl of Eldon would be the establishment of an Eldon Law Scholarship at Oxford; thereby recording Lord Eldon's connection with the profession of the law and of the University of which he was so distinguished an ornament, and at the same time conferring a real benefit as well as a distinction upon meritorious individuals, who may have to struggle with difficulties in the early part of their professional career." Further excellent resolutions were passed — "That the candidates be protestants, of the Church of England, and members of the University of Oxford, who, having passed their examination for the degree of Bachelor of Arts, shall have been rated in the first class in one branch at least of examination, or shall have gained one of the University prizes, and who shall intend to follow the profession of the law." The first election was to take effect from the 4th June, being Lord Eldon's birth-day. It was arranged that the trustees should pay a sum not exceeding 200*l.* per annum for three years to each Eldon scholar, by which time he might be called to the bar. Lord Tenterden was requested to accept the office of visitor to the foun-

dation. With such ardent affection to the subject of the memorial was this call to subscription responded to by the country, that 7,800*l.* was raised, — amply sufficient for a permanent foundation. Eight scholars have already benefited by this admirable reward for learning.

On this imperishable basis rests the memory of the great Chancellor, — a monument more durable than the bronze statue or marble bust; — a permanent record of his fame in the University that he loved so well, and a lasting encouragement for able recruits to the profession which he adorned. Some future John Scott, in character and intellect, may be qualified by this munificence to emulate his career. One more honourable to himself and useful to his country cannot be presented to the example of the Eldon scholar.

INDEX.

Abbott (Lord Colchester), the turnspit, i. 81.
Abercromby, motion by, against Lord Eldon, ii. 439.
Abercrombie, Dr., on Hadfield's trial, ii. 51.
Abingdon, Lord, preserves of, poached upon by Lord Eldon, ii. 514.
Actors and Advocates compared, i. 162.
Adair's anecdote of Erskine, i. 426.
Adam, Mr., and Lord Ellenborough, i. 351.
Addington and the Tinman, i. 436.
Addington's interview with Law, i. 324.
Admiralty Court, Lord Stowell's judgments in, ii. 36.
Adolphus' private anecdotes of Gibbs, i. 243.
Age, Buller made judge at 32, i. 5.
Alley, Mr., interrupted by Lord Ellenborough, i. 351.
Alvanley, Richard Pepper, Lord, life of, i. 129—161.
Alvanley, Lady, Sir W. Scott's praise of, i. 142.
American condemned vessels, Lord Stowell's judgments on, ii. 335.
Anti-Jacobin, parody of Erskine in, i. 460.
Apsley, Lord, and the peeress suitor, anecdote of, ii. 480.
Arden's (Lord Alvanley) story in a horse cause, i. 131.
Arnold's, Dr., defence of some capital punishment, i. 343.
Atholl's, Duke of, claim, Lord Ellenborough against, i. 330.
Atkinson, Charles, M. P., history of, ii. 497.
Attorneys and Lord Kenyon, i. 64.
Attorney-General and judge incompatible, i. 143.
Attorney-General, duties of, i. 266—267; prosecutions by, i. 378—379.
Bailie, Capt., Erskine's defence of, i. 405.
Baldwin, and Lord Mansfield, i. 441.
Banbury peerage case, i. 282.
Bankes, Mr., and old Bags, anecdote of, ii. 480.
Barré, Col., speech of, against Wedderburn, i. 185.
Bar, the, Lord Kenyon's manner to, i. 54.
Barrington, Sir Jonah, anecdote by, ii. 162.
Barrington and Arden, South Wales' judges, i. 132.
Bearcroft's repartees, i. 438.
Beaufort, Duke of, candidate for Chancellorship, ii. 500.
Beaurain, action of, against Sir W. Scott, ii. 331.
Bedford Square, Lord Eldon's house in, broken into, ii. 49.
Bellingham's trial censurable, i. 288.
Beloe's anecdotes of Lord Loughborough, i. 228—230.
Bentham Jeremy, on Judge Buller, i. 8; on Lord Eldon, ii. 480.
Bentham, Jeremy, and Sir William Grant, i. 205.
Berryer's account of the English bar, ii. 63.
Beresford v. Dubost, trial of, i. 283.
Best, Mr., and Lord Kenyon, i. 55.
Bibliotheca Purriana, i. 7.
Blackstone, Lord Ellenborough, of, i. 383.
Blasphemy, trial of Williams for, i. 88.
Boswell quoted, i. 170; ii. 300.
Boughton, Sir Theodosius, poisoning of, i. 14.
Bowles, Rev. W. L., competitor with Abbott, ii. 238.
Bristol, recordership of, i. 249.
Brougham, Henry, eloquent defence by, of the Examiner, i. 263.

Brougham, Lord, on Sir W. Grant, i. 214—216.
Brougham, Lord, on Lord Eldon, ii. 436.
Brougham, Lord, criticism of, on Wedderburn, i. 190; on Lord Ellenborough, i. 379.
Brougham, Lord, eulogy by, on Erskine, i. 423. 455.
Browne, Sir Thomas, quotations from, ii. 344.
Bruce's Travels questioned, i. 233.
Buchan, Earl of, account of, ii. 133—139.
Buller and Burke compared i. 1; altercation with Erskine, i, 428.
Buller, Mr. J., patron of Abbott, ii. 241.
Buller, Sir Francis, life of, i. 1—32.
Burgess, Bishop, of Lord Tenterden, ii. 241.
Burke, Erskine of, ii. 103.
Burke's spleen to Erskine, i. 451—453.
Burke's letter to Wedderburn, 196.
Butler, Charles, of Lord Eldon, ii. 409; letter to, i. 421.
Butler, Charles, eulogy by, on Sir W. Grant, ii. 213.
Byron, Lord, and Lord Eldon, interview between, ii. 442.

Cabinet Minister, Lord Ellenborough, i. 334.
Cambridge, Erskine at, i. 404.
Cambridge Tripos Paper, list of great lawyers in, i. 305.
Canterbury, Archbishop of, Sunday musical parties by, ii. 4.
Carlile and Lord Tenterden, ii. 265.
Carnan, Mr., and Stationers' Company, i. 418.
Carr, Sir John, v. Hood, trial of, i. 375.
Censor morum, Lord Kenyon as, i. 104.
Chancellorship of Oxford University, election for, ii. 500.
Chancery, court of, delays in, ii. 4.
Chancery counsel, increased number of, ii. 4.
Charlotte's, Queen, interference with chancellor's patronage, ii. 435.
Chatham's, Lord, patronage of Wedderburn, i. 184.
Christie, the auctioneer, and Erskine, i. 432.
Circuit, northern, invaded by Wedderburn, i. 171.
Clarke, Dr., conversation of, with Lord Erskine, i. 453.
Clarke, Mrs., cross examination of, by Gibbs, i. 269.
Clifford's sparring match with Gibbs, i. 269.
Clifford and the chief justice, i. 56.
Clithero election petition, ii. 45.
Clive, Lord, Wedderburn's patron, i. 178; speech for, 180, 181.
Cobbett, trial of, for libel, 257—260.
Cobbett's rhapsody, i. 35.
Cochrane, Lord, trial of, i. 357.
Cochrane, Lord, motion of, for impeaching Lord Ellenborough, i. 359; pamphlet of, i. 360.
Cock-fighting, illegality of, i. 368.
Coffins, iron, Lord Stowell's judgment on, ii. 343.
Coghill's, Dr., ungallant doctrine, i. 19.
Coleridge, Mr. Justice, at Oxford, ii. 306.
Coleridge, praise of Sir W. Scott, ii. 334; Table Talk, i. 80; lines by, ii. 503.
Commons, House of, Erskine's failure in, i. 447; and boldness at the Bar of the House, i. 449.
Costume of the bar, Erskine and J. Smith upon, ii. 93.
Counsel, severity of Lord Ellenborough to, i. 352.
Courtenay, attack by, on Arden, i. 138.
Courtesy, winning, of Lord Eldon, ii. 419.
Coxe, Archdeacon, and Law at Cambridge, i. 302, 303.
Cowper, joke of, on Judge Ashurst, i. 9.
Crabtree, letter by, to Lord Kenyon, i. 121.
Cradock, interview with Buller, i. 11; letter to, from Lord Stowell, ii. 350.
Crim. con. trials before Lord Kenyon, i. 66.
Croker's edition of Boswell, i. 167.
Croly, Dr., sketch by, of Erskine, 456, 457.
Cross, master in Chancery, account of, ii. 350.
Cumberland's story of Wedderburn, i. 169.
Curran and C. J. Clonmell, i. 26.
Curran and Erskine compared, ii. 54—60.
Cuthell, prosecution of, for libel, ii. 7.

D'Aguesseau, Chancellor, cited, ii. 420.
Dallas, harshness of Lord Ellenborough to, i. 350.
D'Arblay, Madame, description of Erskine and Lord Loughborough, i. 462.

Davenport, Serjeant, note of, to Lord Thurlow, i. 44.
Dean of St. Asaph, dialogue of, with Lord Kenyon, i. 44.
Debtor and Creditor, laws of, i. 106, 107.
De Barretin, munificence of Lord Loughborough to, i. 235.
Despard, Colonel, sentence on, i. 348.
Devonshire rich in lawyers, i. 239.
Dibdin's, Dr., anecdotes by, of Lord Kenyon, i. 119—126; of Erskine, i. 127.
Divorce, law of, i. 157.
Dodd's, Mr., praise of Lord Ellenborough, i. 384.
Doe dem Stevenson v. Walker, trial of, i. 82.
Donellan, Capt., history and trial of, i. 12.
Douglas, tragedy of, and Wedderburn's defence, i. 166.
Dress of Lord Kenyon, i. 126.
Duelling, Lord Kenyon's remarks upon, i. 69.
Dunning and Kenyon, as students, i. 38.

Egotism of Erskine, and *bon hommie*, i. 459, 460.
Eldon (John Scott, Earl of), life of, ii. 366—520.
Ellenborough (Edward Law, Lord), life of, i. 299—397.
Ellenborough, Lord, on trial for libel, i. 261.
Ellenborough, Lord, libel on, in the Independent Whig, i. 269.
Emancipation (Roman Catholic), people of England against, ii. 474.
Enough, pronunciation of, i. 120.
Epigrams, by Erskine, i. 426.
Erskine's altercation with Buller, i. 26—28,
Erskine quizzed by Lord Loughborough, i. 234.
Erskine and Lord Kenyon, i. 119.
Erskine (Thomas, Lord Erskine), life of, i. 398. and ii. 144.
Espinasse, anecdotes by, of Lord Kenyon, i. 51—53; of Gibbs, i. 291; of Erskine, i. 427—432.
Essex, Earl of, v. Capel, trial of, i. 367.
Examiner, *trial of*, for libel, i. 263—372.
Eyre's, C. J., rebuke to Erskine, ii. 16—23.

Ferguson, trial of, ii. 43; tribute by, to Erskine, i. 44.
Fielding, Mr., and Lord Ellenborough, i. 339.
Finnerty, trial of, for libel, i. 260.
Flower, motion for his Habeas Corpus, i. 57.
Folkstone's, Lord, motion of, against libels, i. 255.
Forgery, trial of foreman of Dr. Dodd's jury for, i. 4.
Fox, praise of, by Erskine, ii. 94, 95.
Fox and Kenyon, A. G., i. 46; Invectives of, against the Master of the Rolls, i. 48; trial of Horne Tooke, i. 59.
Francis, attack of, on Scott, ii. 380.
Franklin, Dr., assailed by Wedderburn, i. 189; Cobbett, i. 191.
Freedom of the press eulogised by Wedderburn, i. 176.
Frost's trial for sedition, i. 73.
Frugality of Lord Kenyon, i. 124.

Gambling, Lord Kenyon's strictures upon, i. 68.
Game anecdotes of Lord Eldon, ii. 500.
Garrick and Erskine compared, i. 458.
Garrow, saying of Erskine to, i. 457; Lord Eldon to, i. 54.
Gaselee, saying of Lord Ellenborough to, i. 353.
Gentleman's Magazine, anecdote in, of Lord Alvanley, i. 161; of Lord Loughborough, 231.
George III., congratulations to Lord Kenyon, i. 51; to Lord Eldon, ii. 444—447; letters of, to Lord Kenyon i. 112.
Gibbs, Sir Vicary, life of, i. 239—298.
Gibbon, befriended by Lord Loughborough, i. 232.
Gisborne, Rev. Mr., letter of, i. 236.
Gordon, Duchess of, and Lord Stowell and Erskine, ii. 142.
Gordon, Lord George, trial of, i. 42, 43. 416; for libel, i. 144.
Graham's bet with Arden. i. 133.
Grandeur of the Law, i. 299.
Grant, Sir W., life of, ii. 191—234.
Green, criticism of, on Erskine, in the House, i. 455.
Grenville, Lord, candidate against Lord Eldon, ii. 509.
Grey, Earl, charge of, against Lord Eldon, ii. 482.
Guildhall, increase of business at, i. 386.
Gurney, Sir J., warning of, ii. 395; narrative by, of Atkinson, 503.

Hackett, Judge's, apology to, i. 27.
Hadfield, Erskine's defence of, ii. 45.

Hargrave, speech by, for Myddleton, i. 206.
Hastings, Warren, trial of, i. 308.
Hawkins, Serjt., defence of criminal code, i. 343.
Heberden, Dr., liberality of, ii. 515.
Hill, Serjt., and Lord Kenyon, i. 118.
Hogarth, punishment of, for caricature, i. 285.
Holland, Lord, rebuke by, to Lord Ellenborough, i. 333; motion against criminal informations, i. 255.
Holme, Clerk, v. Smith, D.D., case of, i. 292.
Hone, Wm., trial of, i. 388, 389.
Hunter, John, examination of, i. 15, 16.
Hunt, Henry, protest of, to Lord Ellenborough, i. 386.

Informations, criminal, motion against, i. 333, 334.
Insolvent Debtors' Bill, Lord Ellenborough against, i. 345.

Jekyll's jokes on Lord Kenyon, i. 33.
Jenkins, Sir Leoline, and Lord Kenyon, i. 33.
Jocularity of Gibbs, i. 281.
Johnson, Dr., interview of, with John and Wm. Scott, ii. 488; pension to, defended by Wedderburn, 177; interview of, with Erskine, 463.
Johnson, Mr. Justice, libel by, i. 165; history of his trial and conviction, 166—169.
Judges, incomes of, i. 6.
Judgments of Lord Ellenborough, i. 385.
Junius, attack by, on Wedderburn, i. 187.
Justices of the peace, Lord Tenterden's defence of, ii. 267.

Kaimes, Lord, extracts from, i. 165.
Kenyon, Lloyd, Lord, life of, i. 33—128.
Kenyon, Lord, dictatorial, i. 109; praise of, by Butler, 113; by his son, 115; compared with Lord Redesdale, ii. 166.
Keppel, Admiral, Erskine's defence of, 408—410; letters between, and Erskine, 410, 411.
Knighton, Sir W., anecdote of Grant, ii. 230; letter from Lord Eldon to, 446.
Knollys, General, case of, ii. 105.

Lambert, Lady Elizabeth, libel on, i. 70.
Latin of Lord Kenyon, i. 77.
Latitude of executory devise, i. 152.
Lauderdale, Lord, and Ellenborough, i. 342.
Laurence, Dr., to Chancellor Rosslyn, i. 228.
Law Review of Sir W. Grant, i. 227, 228.
Law, defence of Sir J. Wallace by, i. 415; at Nisi Prius against Erskine, i. 440.
Law, Mr., disliked by Lord Kenyon, i. 348.
Law and Erskine, rivalry of, i. 318, 319.
Law, Bishop, account of, by Warburton, i. 300; career of, 301.
Lawless, Mr., treatment of, by Lord Kenyon, i. 64.
Lawyers in parliament, i. 251.
Leach, Sir John, anecdotes of, ii. 438; affected despatch of, 439.
Lee Jack, saying of, i. 172.
Letter by Wedderburn to Stuart, i. 173; to Lord Clive, 179.
Letter from Law to Coxe, i. 306; from Lord Ellenborough to Lord Eldon, 391, 392.
Letter from Arden to Wilberforce, i. 136.
Letter from Lord Ellenborough to Bishop of Elphin, i. 335.
Letters of the boy Erskine, 399, 400.
Libel Act, Lord Kenyon against, i. 106.
Libels, scandalous, tried by Lord Kenyon, i. 70.
Lines by Lord Kenyon, i. 35.
Lines by Erskine, i. 470.
Literary Club, Sir W. Scott and Sir W. Jones, ii. 296.
Lockhart, quarrel of, with Wedderburn, i. 167.
Lofft's, Capel, description of young Law, i. 301.
Lords, House of, Lord Kenyon in, i. 105.
Lorraine v. Francis, trial of, i. 357.
Loughborough (Lord), munificence and state of, ii. 493; to the Grand Jury in 1780, 194, 195; merciful as a Judge, 198, 199.
Loughborough, Lord (Alexander Wedderburn, Earl of Rosslyn), life of, i. 162—238.
Lyndhurst (Lord) as Chief Baron at Dolgelley, i. 133.

Macclesfield, Lord Alvanley, Recorder of, i. 132.
Mac Namara, Sir W. Grant's judgment on, ii. 217.
Mackintosh, Sir James, compliments of Erskine to, i. 65; anecdote of Lord Stowell, ii. 350.
Mackenzie, Henry, description by, of The Select Society, i. 164.
Macklin teacher of elocution to Wedderburn, i. 167.
Madness, comments of Lord Ellenborough on, i. 356.
Malmesbury, Lord, diary of political negotiations by, i. 202—204.
Malthus confutes Lord Kenyon, i. 101.
Mansfield, Lord, anecdote by, i. 48.
Mansfield, Lord, and Lord Kenyon compared, i. 90—97.
Mara, Madame, action by, i. 97.
Matthias' satire on Lord Loughborough, i. 205.
Mayor of Newcastle, letters of Lords Eldon and Stowell to, ii. 503.
Melville, Lord, trial of, ii. 95.
Miller's praise of Sir W. Grant, i. 217.
Mingay's rejoinders to Erskine, i. 438.
Mitford's, Sir J., altercation with Erskine, i. 443, 444.
Mitford, William, notice of, i. 146, 147.
Moises, Rev. Hugh, account of, ii. 282; epitaph to, ii. 365.
Montague, Basil, anecdotes by, of Lord Eldon, ii. 385. 399.
Morgan, Erskine's apology to, i. 443.
Morgan, Lady, description of Erskine by, 89; Erskine's letter to, i. 125.
Mortmain, statute of, i. 155.
Mulgrave's, Lord, reproof of Lord Ellenborough, i. 331.
Municipal Corporation Bill, Lord Eldon against, ii. 490.
Musæ Etonenses, i. 240.
Myddleton v. Lord Kenyon, suit of, i. 206.

Nelson, Sir Horatio, letter by, to the Chancellor, i. 229.
Nicholas, Sir Harris, of Lord Redesdale, i. 188.

O'Brian, duel of, with Erskine, i. 439.
O'Coigley, trial of, for high treason, i. 23.
O'Connor, trial of, i. 25; guest at Talien's, 64.
O'Grady, address by, to Lord Redesdale, ii. 124.
O'Keefe and Lord Kenyon, i. 103.
Oxford theatre, Lord Eldon and Lord Encombe at, ii. 517.

Paine, prosecution of, by Erskine, ii. 35.
Park, Mr. J. Allan, joke of Lord Ellenborough on, i. 351.
Parr, Dr., memorandum of, i. 43; witness in Lord Chedworth's case, 71; Erskine's letter to, 127; will of, 128; attack on the judges, 120.
Paul, Emperor of Russia, libel on, ii. 50.
Peerage for the People, blunders in, i. 59.
Perry, trial of, at Bristol, i. 250; for libel, 261.
Phillips, Sir Richard, at levee with Gibbs, i. 274.
Pigot, Lord, trial of, i. 41.
Pitt's friendship with Arden, i. 131; frolic of, 160; interview with Maurice, 233; scorn of Erskine's debût, 447; dislike to Buller, 10.
Plunkett, jeu d'esprit of, i. 163.
Press, the licentiousness of, i. 371.
Privilege of Parliament, i. 106, 107; vindicated, 370, 371. 382.
Prince Regent, letter from to Erskine, i. 62.
Proxies in the House of Lords debated, ii. 477.

Quaker questioned by Lord Ellenborough, i. 355.
Quarterly Review, account of Law in, i. 302, 303.
Queen Caroline, trial of, i. 116—119; Lord Eldon of, ii. 484.

Redesdale, John Mitford, Lord, life of, ii. 145—190.
Reeve, trial of, i. 74.
Reform bill, Lord Eldon against, ii. 490.
Reforms, Sir W. Grant's suspicions of, i. 210.
Regency question discussed, i. 200.
Regrating laws against, defended, i. 101, 102.
Repton, Rev. Mr., chaplain to Lord Eldon, ii. 499.
Repton, Lady Elizabeth, ii. 505.
Reynolds, anecdote by, of Arden and Baron Pilnitz, i. 145; of young Erskine, i. 405.
Riots of 1780, how suppressed, i. 192, 193.
Robinson, Sir Christopher, reports of Lord Stowell's judgments. ii. 333.
Rolliad, the, and Lord Kenyon, i. 50.

Romilly, Sir S., of Lord Eldon, ii. 416.
Romilly, Sir S., of Sir W. Grant, ii. 209.
Romilly's censure of Mr. J. Buller, i. 31.
——— reforms opposed by Lord Ellenborough, i. 339; by Grant, ii. 210; by Eldon, ii. 462.
Rosciad, lines in the, on Wedderburn, i. 169.
Rosslyn, Lord, treatise on prisons, i. 225.

Satire, Mr. Abbott's essay upon, ii. 239.
Savage, verses of, on Mr. Justice Page, i. 18.
Scott, Hon. John, character of, ii. 423.
Select society, history of, i. 163—7.
Sensibility of Lord Kenyon, i. 86.
Seward, Miss, of Erskine, i. 464.
Shelley's Chancery suit, ii. 423.
Sheriff, High, and the Judges, i. 30.
Sheridan cross examined by Law, i. 321.
Shipley, Dr., defence of, by Erskine, i. 420.
Short hand known to the Romans, ii. 8.
Sidmouth, Viscount, marriage of, ii. 328.
Sight-seeing, Lord Stowell and, ii. 357.
Slave (Grace), Lord Stowell and, ii. 347.
Slave trade, Erskine of, i. 124; Lord Eldon's defence of, ii. 464; abolition of, 464.
Sligo, Marquis of, trial of, ii. 328.
Sligo, Marchioness of, marriage to Sir W. Scott, ii. 330.
Smith, Rev. Sydney, of Lord Kenyon's political economy, i. 101.
Smith, James, anecdotes by, of Lord Kenyon, i. 127; and of Lord Ellenborough, i. 397.
Smith, James, anecdote of Erskine, i. 427.
Southey v. Sherwood, case of, ii. 430.
Southcote, Johanna, trial concerning, i. 292.
Special pleader, hard labour of, i. 242.
Speech, maiden, of Mr. Scott, ii. 388.
Spence, defence of, i. 87.
State trials of 1794, history of, ii. 9; trials of Hardy and Tooke, 245—249, 9—83.
Stockdale, trial of, ii. 5.
Stowell (William Scott), Lord, life of, ii. 279—365.
Strictures on the lives of lawyers cited, i. 7.
Student, Lord Eldon as, ii. 378.
Sugden, consultation of, with Gibbs, i. 276.
Sullivan, Colonel, punishment of, for libel, i. 286.
Sunday, observance of, at the close of the 19th century, i. 506.
Surtees, Miss, married to Lord Eldon, ii. 374; anecdotes of beauty of, 375.
Sussex, Duke of, libel on, i. 372.
Swedish vessels, Lord Stowell's judgments upon, ii. 338.

Talfourd, Serjeant, criticism of, upon Erskine, ii. 52—54; on Lord Tenterden, ii. 251; his felicitous union of law and literature, ii. 294.
Talfourd, Serjeant, sketch of Lord Ellenborough and Hunt, i. 386, 387.
Teignmouth, Lord of, and Grant, ii. 231.
Tenterden (Charles Abbott, Lord), life of, ii. 234—278.
Test Act Repeal Bill, ii. 483.
Thanet, Earl of, trial of, i. 320.; conviction of, ii. 42.
Thelluson's will, history of, i. 150.
Thelwall, character and trial of, ii. 32.
Thompson, Mr., fined for shouting in court, i. 73.
Thumb, Judge, caricature of Buller, i. 19.
Thurlow, Lord, convinced by Scott, ii. 385.
Thurlow, Lord, and Buller, i. 9; and Arden, 146, 147; compared with Lord Loughborough, 232; patron of Lord Eldon, ii. 405; resignation of, 406.
Tierney, Mr., protest of, ii. 75.
Times newspaper and Gibbs, i. 257.
Tooke, Horne, deportment and anecdotes of, ii. 24—27.
Topping and Gibbs, i. 277.
Travel, foreign, Scott's Essay on, ii. 36.
Turner, Bishop, anecdote by, i. 389.

Unitarian, what is an? Lord Eldon's question, ii. 481.
University election, i. 251; honours gained by lawyers, 305.

Vaughan, Sir Robert, letters from, to Lord Eldon, ii. 499.

Wagers, trifling, discountenanced, i. 369.
Wake, Kyd, sentence on, i. 74.
Wakefield, Gilbert, trial of, i. 75.
Walker, Mr., trial of, for sedition, i. 319.
Walker, Mr. Erskine's defence of, i. 435.
Wall, Governor, trial and conviction of, i. 325.

Wardle, Colonel, invectives of Gibbs against, i. 287.
Watson, Bishop, of Lord Loughborough, i. 201.
Wealth of Lord Eldon as counsellor and judge compared, ii.
Wealth of Lord Stowell, ii. 357.
Wealth of Thelluson exaggerated, i. 152—155.
Wedderburn, General, account of, i. 163.
West, Mr., and Lord Kenyon on engravings, i. 103.
Westminster scrutiny, Erskine on, i. 449.
Westminster Hall cited, i. 79.
Wetherell, Sir Charles, reproved by Lord Ellenborough, i. 351.
Wetherell, Sir Charles, of Lord Eldon, ii. 439.
Whitbread assailed by Lord Ellenborough, i. 362.
Whitefield's account of Earl Buchan's funeral, ii. 143.
Wilkes and Wedderburn compared, i. 182.
Will, Lord Stowell's, ii. 353; Lord Eldon's, 484.
Willes, Justice, sentence by, on Lieutenant Bourne, i. 416.
Wilson's letter respecting Erskine, i. 447.
Windham against Lord Erskine's bill, i. 86.
Witnesses, severe treatment of, by Lord Ellenborough, i. 355.
Wooler's dialogue with Lord Ellenborough, i. 354.
Wrangham, Archdeacon, appeal of, i. 208.
Wraxall mistakes Junius for Wedderburn, i. 228.

Yelverton, C. B. and Lord Kenyon, i. 123, 124.
Young, Rev. Arthur, party violence of, i. 24.

THE END.

London:
Printed by A. Seotteswoode,
New-Street-Square.

00023624

Digitized with financial assistance from

HT Parekh FOUNDATION

An Initiative by HDFC

WITH YOU, RIGHT THROUGH

on 27 November, 2018